

3 1761 11849782 5

A1

B140

1996

G72

Government
Publications

Guide to the Federal Real
Property Act and Federal Real
Property Regulations

CA1
TB140
-1996
G72

Government
Publications

Treasury Board of Canada
Secrétariat

Conseil du Trésor du Canada
Secrétariat

Guide to the *Federal Real Property Act* and Federal Real Property Regulations

Bureau of Real Property and Materiel
Treasury Board Secretariat

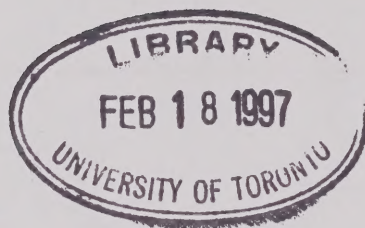
October 1996

Canada

Guide to the *Federal Real Property Act* and Federal Real Property Regulations

Bureau of Real Property and Materiel
Treasury Board Secretariat

October 1996



©Minister of Public Works and Government Services Canada 1996
Catalogue No. BT 22-49/1996
ISBN 0-662-62687-7

Published by the
Planning and Communications Directorate
Treasury Board of Canada, Secretariat
October 1996



This document is available on-line via the TBS home page on Publiservice,
the federal government internal network, at the following address:
<http://publiservice.tbs-sct.gc.ca>

It is also available on Internet at the following address:
<http://www.tbs-sct.gc.ca/>

It will also be available on the January 1997 edition of the CD-ROM
called *Treasury Board Secretariat Publications for
the Management of the Federal Government*


Guide to the *Federal Real Property Act* and Federal Real Property Regulations

Note: This guide is intended to help government officials understand the legislative, historical and policy context of the *Federal Real Property Act* and the Federal Real Property Regulations. It is meant to provide background for discussions on interpreting the Act and Regulations as well as on their future reforms. It's not meant, however, to provide legal advice on the Act and Regulations.

Enquiries should be directed to the Bureau of Real Property and Materiel, Treasury Board Secretariat at (613) 957-0204.

Table of Contents

- 1. *Federal Real Property Act***
 - 1.1 Overview
 - 1.2 Text and Commentaries
- 2. *Federal Real Property Regulations***
 - 2.1 Overview
 - 2.2 Text and Commentaries
- 3. *General Questions on the Federal Real Property Act and Regulations***
 - 3.1 Scope of the Act and Regulations
 - 3.2 Crown Grants
 - 3.3 Real Property Conveyances
 - 3.4 Administration
 - 3.5 Administration and Control
 - 3.6 Department of Justice
 - 3.7 Crown and other Government Corporations



Digitized by the Internet Archive
in 2024 with funding from
University of Toronto

<https://archive.org/details/31761118497825>

Federal Real Property Act

Table of Contents

Section	Title	Page
1	Enactment of Federal Real Property Act	1
2	Short Title	2
3	Interpretation and Abbreviations	3
4	Commencement and Application	4
5	Provisions of the Act	5
6	Enactment of Federal Real Property Act	6
7	Enactment of the Act	7
8	Enactment	8
9	Enactment	9
10	Enactment	10
11	Enactment	11
12	Enactment	12
13	Enactment	13
14	Enactment	14
15	Enactment	15
16	Enactment	16
17	Enactment	17
18	Enactment	18
19	Enactment	19
20	Enactment	20
21	Enactment	21
22	Enactment	22
23	Enactment	23
24	Enactment	24
25	Enactment	25
26	Enactment	26
27	Enactment	27
28	Enactment	28
29	Enactment	29
30	Enactment	30
31	Enactment	31
32	Enactment	32
33	Enactment	33
34	Enactment	34
35	Enactment	35
36	Enactment	36
37	Enactment	37
38	Enactment	38
39	Enactment	39
40	Enactment	40
41	Enactment	41
42	Enactment	42
43	Enactment	43
44	Enactment	44
45	Enactment	45
46	Enactment	46
47	Enactment	47
48	Enactment	48
49	Enactment	49
50	Enactment	50
51	Enactment	51
52	Enactment	52
53	Enactment	53
54	Enactment	54
55	Enactment	55
56	Enactment	56
57	Enactment	57
58	Enactment	58
59	Enactment	59
60	Enactment	60
61	Enactment	61
62	Enactment	62
63	Enactment	63
64	Enactment	64
65	Enactment	65
66	Enactment	66
67	Enactment	67
68	Enactment	68
69	Enactment	69
70	Enactment	70
71	Enactment	71
72	Enactment	72
73	Enactment	73
74	Enactment	74
75	Enactment	75
76	Enactment	76
77	Enactment	77
78	Enactment	78
79	Enactment	79
80	Enactment	80
81	Enactment	81
82	Enactment	82
83	Enactment	83
84	Enactment	84
85	Enactment	85
86	Enactment	86
87	Enactment	87
88	Enactment	88
89	Enactment	89
90	Enactment	90
91	Enactment	91
92	Enactment	92
93	Enactment	93
94	Enactment	94
95	Enactment	95
96	Enactment	96
97	Enactment	97
98	Enactment	98
99	Enactment	99
100	Enactment	100

1. Federal Real Property Act

1.2 Text and Commentaries

Table of Contents

Section	Title	Page
	Overview of <i>Federal Real Property Act</i>	iii
1	Short Title	1
2-3	Interpretation and Definitions	2
3	Delegation and Authorization	12
4	Dispositions and Licences	13
5	Grants of Federal Real Property	14
6	Execution of Licences	21
7	Plans	22
8	Delivery	23
9	Words of Limitation	25
10	Grants to Her Majesty	26
11	Administration and Control	27
12	Restrictive Covenants	29
13	Acquisition under Provincial Act	30
14	No Title by Prescription	31
15	Minister of Justice	32
16-18	Authorities for Dispositions, Acquisitions and Administrative Transfers	35
17	Territorial Lands	65
18	Administration	67
19	Defence Lands	73
20	Grants to Deceased Persons	75
21	Correction of Defective Grants	76
22	Inconsistent Grants and Transactions	77
23-49	Consequential Amendments	79
23-4	<i>Canada-Newfoundland Atlantic Accord Implementation Act</i>	80
25-6	<i>Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act</i>	82
27-8	<i>Financial Administration Act</i>	84
29	<i>Government Property Traffic Act</i>	87
30	<i>Department of Indian Affairs and Northern Development Act</i>	88
31	<i>Land Titles Act</i>	89
32	<i>Municipal Grants Act</i>	90
33	<i>Northern Inland Waters Act</i>	92
34	<i>Northern Pipeline Act</i>	93
35-6	<i>Oil and Gas Production and Conservation Act</i>	94
37-40	<i>Public Works Act</i>	96
41-4	<i>Surplus Crown Assets Act</i>	99
45	<i>Territorial Lands Act</i>	103

46	<i>Department of Transport Act</i>	104
47-8	<i>Canada Wildlife Act</i>	105
49	<i>Yukon Placer Mining Act</i>	107
50	Repeal of the <i>Public Lands Grants Act</i>	108
51	Coming into Force	109

1. *Federal Real Property Act*

1.1 Overview

The *Federal Real Property Act*, brought into force on September 15, 1992, was designed to be the primary statutory authority for the real property conveyance practices of the federal government. More specifically, the Act:

- repealed the *Public Lands Grants Act* and amended the *Public Works Act*, the *Financial Administration Act*, and the *Surplus Crown Assets Act*, thereby consolidating the government's generic real property legislation into one Act;
- simplified and modernized the government's real property management and conveyance practices;
- does not affect the authority to deal with real property governed by special program legislation such as the *National Parks Act*, the *Indian Act*, or the *Territorial Lands Act*; and
- permits the use of conveyancing practices commonly used within the private sector, thus making it easier to deal with the federal government.

Background

In 1985, the Task Force on Program Review recommended reforms to the management of federal real property. Cabinet subsequently adopted these recommendations and assigned responsibility to the Treasury Board for their implementation. One of these reforms was simplifying and modernizing federal real property management. A critical part of this management reform included modernizing present conveyancing methods to make them more timely and efficient.

In 1985 Treasury Board responded to the Cabinet decision by creating a new "unit," the Bureau of Real Property Management (now the Bureau of Real Property and Materiel), to provide a central coordinating focus for federal real property management.

The *Federal Real Property Act* was the culmination of several years work by the Bureau of Real Property and Materiel, the Department of Justice and all custodian departments to consolidate and coordinate federal real property management and practices and to review the instruments used in the federal conveyancing practice. The Act, brought into force on September 15, 1992, is intended to be the primary statutory authority for the real property practices of the federal government.

Before, three main statutes – the *Public Lands Grants Act*, the *Public Works Act*, and the *Surplus Crown Assets Act* – generically governed federal real property transactions.

These Acts had not facilitated the use of modern real property management practices and techniques. The *Public Lands Grants Act* and the *Public Works Act* had changed little since their

enactments in the late 1800s and the *Surplus Crown Assets Act* was suited more to disposing of non-real property assets. In addition, the Acts contained inconsistent practices and processes. They overlapped each other, creating confusion about the authorities to be used in federal real property conveyancing.

Through reconciling the Acts and refining practices and processes, the *Federal Real Property Act* was intended to bring federal real property management and practices into the present in a consistent and effective manner.

Contents of the Act

The main elements of the Act are as follows:

- the Act repealed the *Public Lands Grants Act*; however, some provisions of that Act were re-enacted in the new legislation;
- two sections of the *Public Works Act* were repealed, with their contents being revised and incorporated in the *Federal Real Property Act*;
- the *Surplus Crown Assets Act* was amended to apply only to personal property assets (i.e., property other than real property);
- the government can now grant federal real property through modern conveyancing instruments, such as deeds, in addition to the traditional letters patent, significantly reducing the time and management of conveyances;
- the concept of "administration" was introduced into federal real property terminology to be consistently used to describe the authority and responsibilities for management and use of federal real property by ministers (departments) or by agent Crown corporations;
- the Act enabled the transfer of administration of federal Crown lands between agent Crown corporations and ministers (departments);
- the Act clarified the authority to grant title to federal real property to a Crown corporation administering the land;
- the Act clarified the roles of the Governor in Council, Treasury Board and the Department of Justice in federal real property to ensure consistency in the treatment of various types of transactions;
- the Act allowed the federal Crown to grant lands to itself, which facilitates the registration of previously ungranted federal real property in some provincial land registry systems; and
- the Act clarified the permissibility of charging market rates in leasing and licencing federal real property.

Overview of the Act

Sections 1-3	These sections contain the title of the Act, definitions for wording in the Act, and a power of delegation of authority.
Section 4	This section contains a general prohibition on the powers of disposing of federal real property.
Sections 5-11	These sections contain provisions relating to conveyancing, leasing and licensing federal real property and the execution and legal effect of the instruments used.
Sections 12-14	These sections contain restrictions on the rights that can be acquired on federal real property by means other than Crown grants.
Section 15	This section sets out the role of the Minister of Justice in the federal real property practice and provides for the making of certain regulations.
Section 16	<p>This section contains:</p> <ul style="list-style-type: none">• the authorities given to the Governor in Council in relation to federal real property [16(1)];• the subject areas in which regulations can be made [16(2)];• authority for interministerial delegation of authority [16(3)]• the authority given to Treasury Board to establish policy restrictions or limits on real property transactions authorized pursuant to regulations [16(4-5)];• clarification of how rent and licence fees charged for public lands may be calculated [16(6)]; and• authority for acquiring a share in a condo, co-op or similar corporation [16(7)].
Section 17	This section contains special conditions relating to disposing of federal Crown lands in the Yukon or Northwest Territories.
Section 18	This section describes the legal effect of a minister administering federal Crown lands.
Section 19	This section deals with Defence lands.
Section 20	This section deals with the effect of a Crown grant to a deceased person.
Sections 21-22	These sections deal with correcting defective Crown grants and resolving inconsistent transactions.

- Sections 23-49** These sections contain the incidental amendments to other Acts necessitated by the provisions of the *Federal Real Property Act*.
- Section 50** This section repeals the *Public Lands Grants Act*.
- Section 51** This section states that the Act would not come into force until a date fixed by Order in Council. (The Act came into force on September 15, 1992.)

Section 1 – Short Title

An Act respecting the acquisition, administration and disposition of real property by the Government of Canada.

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short Title

1. This act may be cited as the *Federal Real Property Act*.
-

Notes

The section gives the short title of the Act as the *Federal Real Property Act* (FRPA). This is the name that should be used when referring to the Act.

Interpretation and Definitions

2. In this Act

This subsection provides definitions for words which are used in this Act.

"administration"

«gestion»

"administration" means administration within the meaning of section 18;

Notes

This defines the word "administration" for the purposes of this Act as having the meaning given in section 18.

Note: "Administration" is difficult to define as it is a state of being, like ownership, rather than an activity. Section 18 doesn't define "administration" *per se*. The section describes how administration may be obtained and transferred and what a minister's rights are in relation to the property he or she administers.

Related General Questions

- 3.4.1 What is "administration" of federal real property?
- 3.4.2 Why was the change made to "administration?"
- 3.4.3 What is the difference between "administration" and "administration and control?"
- 3.4.4 What are a minister's main responsibilities in relation to the real property he or she administers?
- 3.4.5 Did the coming into force of the FRPA affect a minister's administration?
- 3.4.6 Why are transfers of administration made?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(1)(j): GIC transfers of administration
- s. 16(2)(g): regulations on transfers of administration
- s. 18: administration

FRPRegs

- s. 6: transfers of administration

TBRP

- Chapter 1-2: administration

"agent corporation"

«société mandataire»

"agent corporation" means an agent corporation as defined in section 83 of the *Financial Administration Act* (FAA);

Notes

The definition of "agent corporation" is the same as that in the FAA. Under that Act, an "agent corporation" is a Crown corporation declared by or pursuant to an Act of Parliament, other than the FAA, to be an agent of the Crown. Not all Crown corporations are agent corporations.

Related General Questions

3.7.1 What is the difference between Crown corporations, agent corporations, and departmental corporations?

Source

New. Subsection 83(1) of the FAA defines "agent corporation" as follows:

" "agent corporation" means a Crown corporation that is expressly declared by or pursuant to any other Act of Parliament to be an agent of the Crown."

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(1)(j): GIC authorization of transfers of administration
- s. 16(1)(l): GIC authorization of grants of property administered by a corporation
- s. 16(2)(g): regulations on transfers of administration
- s. 18(6): administration by corporation
- s. 28: *Financial Administration Act*, section 99

"Crown grant"

«concession de l'État»

"Crown grant" means any of the instruments referred to in section 5, a plan referred to in section 7, a notification within the meaning of the *Territorial Lands Act* or any other instrument by which federal real property may be granted;

Notes

"Crown grant" is defined as:

- a grant by letters patent under the Great Seal as referred to in paragraph 5(1)(a) of this Act;
- an instrument of grant under paragraph 5(1)(b);
- a provincial conveyancing instrument under subsection 5(2);
- a conveyancing instrument used in a foreign jurisdiction under subsection 5(3);
- a lease under subsection 5(4);
- a plan used to grant real property under section 7;
- a notification under the *Territorial Lands Act*; and
- any other document by which federal real property may be granted.

The definition extended the previous definition of "grant" under the *Public Lands Grants Act*. The previous definition limited Crown grants to those conveying a fee simple or equivalent estate in real property.

Related General Questions

- 3.2.1 What kinds of documents can be used to issue Crown grants of federal lands under the FRPA?
- 3.2.2 What is a notification?

Source

Modification of definition of "grant" in section 2 of the *Public Lands Grants Act*, which read:

"grant" means letters patent under the Great Seal, a notification and any other instrument by which public lands may be granted in fee simple or for an equivalent estate."

"department"

«ministère»

"department" means

- (a) department named in Schedule I to the *Financial Administration Act*,
 - (b) division or branch of the Public Service of Canada named in Schedule I.1 to that Act,
 - (b.1) commission under the *Inquiries Act* designated as a department for the purposes of the *Financial Administration Act*, and
 - (c) departmental corporation as defined in section 2 of the *Financial Administration Act* (amended 1992, c. 1, s. 157);
-

Notes

"Department" is defined as:

- any government department listed in the FAA;
- any government branch or division named in Schedule I.1 to the FAA;
- a commission appointed under the *Inquiries Act* designated to be a department under the FAA; and
- any departmental corporation listed in the FAA.

The FAA definition for "department" clarified that all government bodies considered to be departments under that Act were to be treated equally under the FRPA. This eliminated the question previously raised as to whether a minister could legally administer federal real property on behalf of such government bodies as the National Archives. This definition was amended in 1992 to conform to an amendment made in the FAA definition of "department." Schedule I.1 of the FAA consists of government branches and divisions such as the Public Service Commission and the RCMP.

Related General Questions

3.7.1 What is the difference between Crown corporations, agent corporations, and departmental corporations?

Source

Modification of the definition of "department" contained in section 2 of the FAA which, at the time of passage of the FRPA, read as:

" "department" means

- (a) any of the departments named in Schedule I,
- (b) any other division or branch of the public service of Canada, including a commission appointed under the *Inquiries Act*, designated by the Governor in Council as a department for the purposes of this Act,
- (c) the staffs of the Senate, the House of Commons and the Library of Parliament, and
- (d) any departmental corporation."

"federal real property"

«immeuble fédéral»

"federal real property" means real property belonging to Her Majesty, and includes any real property of which Her Majesty has the power to dispose;

Notes

"Federal real property" is defined as real property belonging to the Crown. This also includes any real property of which the Crown has the power to dispose. This tracks the previous definition of "public lands." Although there are no apparent examples of lands that do not belong to the Crown but for which the Crown has the power to dispose, it was thought prudent to retain that phrase to preserve the *status quo* for any such properties that may exist.

Source

Modification of the definition of "public lands" contained in section 2 of the *Public Lands Grants Act*, which read:

"*"public lands" means lands belonging to Her Majesty in right of Canada and includes lands of which the Government of Canada has power to dispose.*"

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "real property"

"head of mission"

«chef de mission»

"head of mission" in relation to real property in a country outside Canada, means a person described in subsection 13(1) of the *Department of External Affairs Act* who represents Canada in that country;

Notes

This adopts the definition of "head of mission" used in the Act governing the Department of External Affairs. A "head of mission" is

- an ambassador,
- a high commissioner,
- a Canadian consul-general, or
- any other person designated by the Governor in Council as a head of mission.

The FRPA uses "head of mission" to allow ministers to delegate authority to heads of mission in cases of transactions involving real property in foreign countries.

Source

New. Subsection 13(1) of the *Department of External Affairs Act* read as follows:

" 13. (1) In this section, "head of mission" means

(a) an ambassador, high commissioner or consul-general of Canada; or

(b) any other person appointed to represent Canada in another country or a portion of another country or at an international organization or diplomatic conference and designated head of mission by the Governor in Council."

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 3: authorization of officials

Section 2 – Interpretation and Definitions

"Her Majesty"

"interest"

"Her Majesty"

«Sa Majesté»

"Her Majesty" means Her Majesty in right of Canada;

Notes

"Her Majesty" is defined as the federal Crown.

Source

New.

"interest"

«droits réels»

"interest", in relation to land, means a lease, easement, servitude or any other estate, right, title or interest in or to the land, and includes the rights of a lessee therein;

Notes

"Interest," in relation to land, is defined to take in all interests in real property, including leases and easements. As a lease in civil law is not normally an interest in land, and it was intended that these leases be covered by the definition of "interest" for the purposes of the FRPA, the definition of "interest" specifically includes a reference to the rights of a lessee.

Related General Questions

3.3.1 What are servitudes and easements?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "federal real property"
- s. 2(1): definition of "real property"

"licence"

"licence"

«permis»

"licence" means any right of use or occupation of real property other than an interest in land;

Notes

"Licence" is defined as including all rights relating to the use or occupation of real property that are not covered under the definition of "real property" in this Act. This ensures that the Act applies to any rights of use or occupation of real property which would not be an interest in real property as that term is deferred in the FRPA.

Related General Questions

3.3.2 What is the difference between a lease and a licence?

3.4.7 In the FRPA and the FRPRegs, why was the wording "administrative responsibility" applied to licences rather than "administration?"

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "interest"
- s. 2(1): definition of "real property"

"Minister"

«ministre»

"Minister", in relation to a department, means the Minister who, under the *Financial Administration Act*, is the appropriate Minister with respect to that department;

Notes

The definition is intended to clarify which minister is responsible for a department, a branch or division of the federal Public Service, or a departmental corporation.

"Minister," in relation to a department, is defined as the appropriate minister within the meaning of the FAA. For the purposes of the FRPA, the appropriate minister is:

- for a department listed in the FAA, the minister presiding over the department;
- for a branch or division of the federal Public Service listed in Schedule I.1 of the FAA, the minister set out in that schedule;
- for a commission under the *Inquiries Act* or for a departmental corporation listed in the FAA, the minister designated by the Governor in Council as the appropriate minister.

Source

New. The definition of "appropriate minister" in section 2 of the FAA read at the time of the passage of the FRPA as follows:

"appropriate Minister" means,

(a) with respect to a department mentioned in paragraph (a) of the definition "department", the Minister presiding over the department,

(b) with respect to any other department, the Minister designated by the Governor in Council as the appropriate Minister,"

The departments mentioned in paragraph (a) of the definition of "department" in section 2 of the FAA were:

"any of the departments named in Schedule I," [which are all of the standard federal departments, such as National Defence, Transport, etc.].

The FAA definition has subsequently been amended.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "department"

"real property"

"real property"

«immeubles»

"real property" means land whether within or outside Canada, including mines and minerals, and buildings, structures, improvements and other fixtures on, above or below the surface of the land, and includes an interest therein.

Notes

"Real property" is defined as land, mines, minerals, buildings, and fixtures on, above or below the surface, and any interest therein, both in Canada and abroad. The definition includes both legal interests in land, such as estates, and physical interests in land, such as mines and minerals.

Source

Modification of definition of "land" in section 2 of the *Public Lands Grants Act*, which read:

" "land" includes mines, minerals, easements, servitudes and all other interests in real property."

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "federal real property"
- s. 2(1): definition of "interest"

Delegation and Authorization

Authorization of officials

3. Any Minister may authorize in writing an officer of the Minister's department or of any other department, or any head of mission, to exercise on behalf of that Minister any power given by or under this Act to that Minister, including the power to sign an instrument.

Notes

This section provides for departmental and interdepartmental delegation of ministerial powers, functions and authority under the FRPA. It states that any power, function or authority, including the right to sign any document, given under this Act to a minister, may be delegated to an officer in the same or a different department or to a head of mission. There must be written authorization from the minister for the delegation to be effective. This followed the existing practice.

This section, and subsection 16(3), were intended to allow for managerial flexibility in applying the Act and its Regulations. These sections were inserted to clarify authority for the common practice of delegation within or between departments. They were also felt to be needed because the FRPA repealed the authority for the Minister of Public Works to dispose of real property declared surplus under the *Surplus Crown Assets Act*. The policy intention behind this section, and subsection 16(3), was to make it at least as easy, if not easier, to delegate powers to an agent, usually PWGSC, as it was prior to the FRPA.

During the drafting of the FRPA, there was some discussion on combining section 3 and subsection 16(3), as they both dealt with delegation of authority. This was not done because:

- subsection 16(3) had to stay in section 16 because it specifically refers to transactions under that section; and
- it was felt important for "optics" to have a delegation provision at the front of the Act.

Related General Questions

1. Why should there be authority for interdepartmental delegation of authority?

Source

New, based in principle on an extension of section 6 of the *Public Lands Grants Act*, which pertained solely to leases and read:

" 6. All leases of public lands issued by special authority of the Governor in Council or pursuant to any regulation of the Governor in Council may be executed on behalf of Her Majesty by the Minister having the management, charge and direction of those lands or by some person thereunto authorized by the Minister."

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "head of mission"
- s. 16(3): delegation between Ministers

Dispositions and Licences

Prohibition

4. Subject to any other Act, no sale, lease or other disposition of federal real property shall be made and no licence shall be given in respect of federal real property except in accordance with this Act.

Notes

Section 4 restricts the powers of persons to dispose of federal real property to those powers conferred by this Act or another Act of Parliament.

This section clarified that the FRPA was intended to be the generic residual authority for real property dispositions by the government. Although it was also intended that the FRPA be the generic residual authority for acquisitions, they were not specifically included in section 4. This omission was intentional, and based on two reasons:

- the predecessor section in the *Public Lands Grants Act* did not address acquisitions; and
- it was thought prudent not to create new grounds for declaring a federal acquisition invalid.

A reference in the predecessor section to Governor in Council authorization was omitted. This was done because subsection 16(1) of the FRPA provides authority for GIC authorized transactions. The only real change with the FRPA was that GIC transactions would have to be carried out on the recommendation of the Treasury Board. Previously, any minister could recommend GIC transactions. This change was made to confirm the Treasury Board's central role in managing government real property transactions. Of course, another federal Act may override this. Various other Acts do not require the Treasury Board's recommendation in relation to specified disposals of real property.

Related General Questions

- 3.1.2 Does the FRPA affect the federal Crown rights of acquisition and disposition under other Acts of Parliament, such as the *National Parks Act*, etc.?
- 3.1.3 How does this Act affect Indian lands?

Source

Section 4 is a modification of section 61 of the FAA, which read:

" 61. Subject to any other Act of Parliament, no transfer, lease or loan of public property shall be made by any person except on the direction of the Governor in Council or in accordance with regulations of the Governor in Council made on the recommendation of the Treasury Board."

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(1): authorities for acquisition and disposition of real property
- s. 16(2): regulations on acquisition and disposition of real property
- s. 27: amendment of section 61 of the FAA

Letters patent and instruments of grant

5. (1) Federal real property may be granted
- (a) by letters patent under the Great Seal; or
 - (b) by an instrument of grant, in a form satisfactory to the Minister of Justice, stating that it has the same force and effect as if it were letters patent.
-

Notes

This subsection describes some of the instruments that may be used to grant federal real property. Paragraph 5(1)(a) states that under the FRPA letters patent can still be used in all cases to grant federal real property.

Paragraph 5(1)(b) provides for a new document, an "instrument of grant," which may be used instead of letters patent to grant federal real property. The "instrument of grant" is an alternative instrument which has the legal effect of letters patent and may be used to grant real property or any interest therein but does not have the complex processes and time delays associated with letters patent.

Related General Questions

- 3.2.1 What kinds of documents can be used to issue Crown grants of federal lands under the FRPA?
- 3.2.3 What are letters patent under the Great Seal?
- 3.2.4 How are letters patent issued?
- 3.2.5 Were letters patent eliminated under the Act? If not, why not eliminate letters patent altogether? Why is an alternative instrument needed for letters patent? Is there a difference in legal effect between "instruments of grant" and grants made by letters patent?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "Crown grant"
- s. 5(5): signature of Minister
- s. 5(6): countersignature of Minister of Justice
- s. 5(7): effect of instrument of grant
- s. 16(1)(a): authority for dispositions of federal real property
- s. 16(1)(h): authority for grants to Crown corporations
- s. 16(1)(i): authority for grants to Her Majesty
- s. 16(2)(a): regulations on dispositions of federal real property

**Instruments
under provincial
law**

5. (2) Federal real property within Canada may, at the discretion of the Minister of Justice, be granted by any instrument by which, under the laws in force in the province in which the property is situated, real property may be transferred by a private person.

Notes

Subsection 5(2) was intended to further modernize and simplify federal Crown conveyancing. The subsection allows for an alternative way to grant federal Crown lands based on current instruments used in the private sector. Under this subsection, conveyancing instruments that can be used by private persons under provincial laws are permitted to be used for federal Crown grants. (Examples of such instruments include deeds, commercial leases or leases drawn in accordance with a provincial Short Form of Leases Act.) The use of provincial instruments would likely result in adopting provincial law, as that law would govern the instruments and their effect. Therefore, to protect the legal interests of the federal government, the use of such instruments is permitted only at the discretion of the Minister of Justice.

It was thought at the time of designing the FRPA that the s. 5(2) provincial instruments would be used most frequently, with the s. 5(1)(b) instruments of grant being the fall-back instrument, and letters patent being used as a last resort. Since the FRPA came into force the practice appears to be following that pattern.

Related General Questions

3.2.1 What kinds of documents can be used to issue Crown grants of federal lands under the FRPA?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "Crown grant"
- s. 5(2): leases
- s. 5(5): signature of Minister
- s. 5(6): countersignature of Minister of Justice
- s. 16(1)(a): authority for dispositions of federal real property
- s. 16(1)(h): authority for grants to Crown corporations
- s. 16(1)(i): authority for grants to Her Majesty
- s. 16(2)(a): regulations on dispositions of federal real property

**Instruments
under foreign
law**

5. (3) Federal real property in a jurisdiction outside Canada may be granted by any instrument by which, under the laws in force in that jurisdiction, real property may be transferred.

Notes

Subsection 5(3) allows federal real property in foreign jurisdictions to be granted through the use of instruments ordinarily used to transfer real property under the laws in force in those jurisdictions. This subsection recognizes that there are different practices used in foreign real property transactions.

This subsection was intended to resolve a legal complication in federal real property conveyancing. The disposition of federal real property outside of Canada is complicated by certain legal principles and the interaction between them. The local (foreign) law generally governs the acquiring and disposing of land but the local (foreign) law vary as to the extent to which the Canadian federal Crown is subject to these laws. Prior to the FRPA, there were problems surrounding the use of letters patent in disposing of federal real property outside of Canada. A complicating factor is that the local (foreign) law will affect the form and content of the letters patent. Subsection 5(3) recognizes that there are different practices used in foreign real property transactions. The subsection allows the disposal documents to be tailor-made in light of the circumstances of the particular case. It should be noted that a head of mission may be delegated authority for transactions abroad.

Related General Questions

- 3.2.1 What kinds of documents can be used to issue Crown grants of federal lands under the FRPA?
- 3.2.8 Why isn't the approval of the Minister of Justice required for Crown grants using foreign instruments?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "Crown grant"
- s. 5(5): signature of Minister
- s. 16(1)(a): authority for dispositions of federal real property
- s. 16(1)(h): authority for grants to Crown corporations
- s. 16(1)(i): authority for grants to Her Majesty
- s. 16(2)(a): regulations on dispositions of federal real property

Leases

5. (4) A leasehold estate in federal real property within Canada may also be granted by a lease that is not an instrument referred to in subsection (1), whether or not it is an instrument by which real property in a province may be transferred by a private person.

Notes

This subsection allows leases of federal real property to be in a form other than that used for leases in the province where the property is located. This allows for the possibility of having one or more lease forms to be used in various provinces to convey leasehold interests in federal real property. It also allows leases to be tailor-made for federal property, regardless of provincial usages.

Related General Questions

3.2.1 What kinds of documents can be used to issue Crown grants of federal lands under the FRPA?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "Crown grant"
- s. 2(1): definition of "interest"
- s. 5(2): provincial instruments
- s. 5(5): signature of Minister
- s. 16(1)(a): authority for dispositions of federal real property
- s. 16(1)(h): authority for grants to Crown corporations
- s. 16(1)(i): authority for grants to Her Majesty
- s. 16(2)(a): regulations on disposition of federal real property

Execution of instruments

5. (5) An instrument referred to in this section granting federal real property, other than letters patent, shall be signed by the Minister having the administration of the property.

Idem

(6) An instrument referred to in paragraph (1)(b), or an instrument referred to in subsection (2) other than an instrument granting a leasehold estate, shall be countersigned by the Minister of Justice.

Notes

Subsection 5(5) states that the minister administering federal real property shall sign any instrument, other than letters patent, used to grant such property. This, (in addition to the restriction in section 99(6) of the FAA), confirms the inability of Crown corporations to use FRPA instruments to grant lands they administer, because there is no minister that administers the property.

Subsection 5(6) provides that the Minister of Justice shall countersign

- all instruments of grant of federal real property within or outside of Canada, and
- all provincial instruments used to grant federal real property within Canada.

This extended the pre-FRPA practice relating to letters patent to the new Crown grants allowed under the FRPA.

Leases do not have to be countersigned by the Minister of Justice.

Does subsection 5(5) give an administering minister the right to dispose? No.

Subsection 5(5) only describes who must sign the instruments used for disposals, including leases, of federal real property. The right of a minister to dispose of federal real property must come from another statutory basis, such as subsections 16(1) or (2) of this Act, (e.g., section 4 of the FRPRegs) another statute, or the authority of the Governor in Council.

Related General Questions

3.2.9 Why must the instruments of grant and the provincial instruments be signed by both the minister administering the real property and the Minister of Justice?

Source

Subsection 5(5) is a modification of section 6 of the *Public Lands Grants Act*, which read:

" 6. All leases of public lands issued by special authority of the Governor in Council or pursuant to any regulation of the Governor in Council may be executed on behalf of Her Majesty by the Minister having the management, charge and direction of those lands or by some person thereunto authorized by the Minister."

Subsection 5(6) is new.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 3: authorization of officials
- s. 16(1)(a): authority for dispositions of federal real property
- s. 16(1)(h): authority for grants to Crown corporations
- s. 16(1)(i): authority for grants to Her Majesty
- s. 16(2)(a): regulations on disposition of federal real property
- s. 16(3): exercise of powers

**Effect of
instrument
of grant**

5. (7) An instrument referred to in paragraph (1)(b) has the same force and effect as if the instrument were letters patent under the Great Seal.

Notes

This subsection clarifies that there is no difference in the legal effect of a grant made by an "instrument of grant" and a grant made by letters patent. Under this Act both are equally effective in transferring federal real property.

This section was intended to assure purchasers that the "instrument of grant" was not inferior to or did not grant a lesser title than letters patent.

The need to have this section to assure purchasers was also one of the reasons it was necessary to preserve letters patent. If letters patent had been eliminated by the FRPA, then a section stating that "instruments of grant" had the same legal effect as letters patent would be meaningless, because letters patent would have ceased to have legal effect.

Source

New.

Execution of licences

6. A licence in respect of federal real property shall be signed by the Minister having the administration of the property.

Notes

Section 6 states that a licence must be signed by the minister administering the property. This parallels the signing requirement for leases.

Source

New. Extension of section 6 of the *Public Lands Grants Act*, which read:

" 6. All leases of public lands issued by special authority of the Governor in Council or pursuant to any regulation of the Governor in Council may be executed on behalf of Her Majesty by the Minister having the management, charge and direction of those lands or by some person thereunto authorized by the Minister."

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 3: authorization of officials
- s. 16(1)(c): authority for licences of federal real property
- s. 16(2)(c): regulations on licences of federal real property
- s. 16(3): exercise of powers

Plans

7. (1) Where under the laws of Canada or a province a plan may operate as an instrument granting, dedicating, transferring or conveying real property for a road, utility, park or other public purpose, the use of such a plan in relation to any federal real property may be authorized by the same authority that may authorize the grant, dedication, transfer or conveyance of that property.

Execution

(2) Any plan referred to in subsection (1) relating to any federal real property shall be signed by the minister having the administration of the property and countersigned by the Minister of Justice.

Notes

Subsection 7(1) gives the federal Crown the right to use plans to grant, dedicate, or convey federal real property for highway, utility, park or other purposes where this use of plans is permitted under federal or provincial law.

Under subsection 7(2) the plan must be signed by the minister administering the real property and countersigned by the Minister of Justice.

Section 7 was intended to allow for greater flexibility and convenience in federal conveyancing. Because federal Crown lands are not subject to most provincial laws, prior to the FRPA the federal Crown could not use plans to grant, dedicate, or convey federal real property for highway, utility or park purposes even in those provinces whose legislation enabled plans to be used for this purpose. Section 7 gives the federal Crown the ability to use plans in this manner where allowed by federal or provincial law.

Related General Questions

3.2.1 What kinds of documents can be used to issue Crown grants of federal lands under the FRPA?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "Crown grant"

**Delivery
required**

8. (1) Subject to a contrary intention expressed in any instrument, the rule of law that a grant of federal real property by letters patent requires no delivery to take effect is hereby abrogated.

**Time of taking
effect**

(2) Every grant of federal real property by letters patent or by an instrument referred to in paragraph 5(1)(b) shall take effect in accordance with the provisions thereof or, if there is no provision for its taking effect, shall take effect,

- (a) where the letters patent are or the instrument is delivered on terms or subject to conditions, on their satisfaction or removal; and**
- (b) in any other case, on delivery of the letters patent or the instrument.**

Notes

Subsection 8(1) abolishes, in general, the rule of law that a grant by letters patent of federal real property conveys the real property regardless of whether the grant instrument is ever delivered to the person being granted that property. Subsection 8(1) can be overridden by express language in the actual instrument used for the Crown grant.

Subsection 8(2) states the new general rule for the time at which federal real property is conveyed by a grant by letters patent or instrument of grant, which is:

- that point in time as set out in the terms of the instrument; or
- if there are no terms in the instrument on the effective time of the conveyance,
 - upon the satisfaction or removal of any terms or conditions of delivery specified in the instrument; and
 - upon delivery if there are no terms or conditions of delivery specified in the instrument.

Section 8 brings Crown grants by letters patent in line with private sector conveyancing documents. This makes letters patent more amenable to efficient and convenient conveyancing practices. In the private sector, conveyancing documentation is often signed and sealed many days or weeks prior to completing the transaction. Title does not pass until the document is "delivered" when the transaction closes.

Unlike private sector deeds and transfers, letters patent prior to the FRPA were effective once they were signed and sealed. In other words, title passed as soon as the letters patent were completed. Because letters patent were effective once they were issued and did not require delivery, the Crown required full payment of the purchase price prior to issuing letters patent. Because of the length of time it took prior to the coming into force of FRPA to obtain letters patent, this prepayment requirement could have created a hardship for the purchaser, particularly individuals who may have had to arrange interim financing before receiving the letters patent.

Section 8, therefore, changed the law so that a Crown grant by letters patent becomes effective on delivery rather than on its execution, unless the grant indicates otherwise. However, the section has no effect on the time required to issue letters patent.

In subsection 8(2) why is it stated that the grant shall take effect in accordance with the terms of the granting instrument? This was inserted to accommodate dispositions in the Province of Quebec or in special circumstances. In Quebec, under the Civil Code there is no legal concept of "delivery" in relation to conveyances. Therefore, to make the grant only effective upon delivery would be a legal impossibility in Quebec.

Under the FRPA, is it necessary to prove that the Crown grant has been delivered for it to take effect? Under the FRPA, a Crown grant by letters patent or instrument of grant, like any deed to real property, must be delivered before it is effective. (Note that this rule does not apply if a contrary intention is found in the document). Delivery usually entails a transfer of possession of the deed from the person conveying the land to the person receiving it. However, the person conveying the lands can state that the deed is binding to constitute delivery. Disputes over delivery of deeds in the private sector are rare, and should be even rarer in conveyances by letters patent.

Source

New.

Words of limitation

9. Where under the laws of a province an instrument transferring real property without words of limitation operates as an absolute transfer of all the transferor's interest in the real property, a grant of federal real property in that province by letters patent or by an instrument referred to in paragraph 5(1)(b) operates as a conveyance of a fee simple or equivalent estate in the property although no words of limitation are used in the instrument, if Her Majesty has power to grant such an estate in the property and no contrary intention is expressed in the instrument.

Notes

Section 9 permits a grant of federal real property by letters patent or instrument of grant to operate as an absolute conveyance (fee simple or equivalent) of all of the Crown's interest in the property even when this is not specifically stated in the conveyancing instrument.

Section 9 is only operative when:

- the laws of the province in which the Crown lands are located provide that words of limitation are not required in instruments conveying lands in the province;
- Her Majesty has the power to grant a fee simple or equivalent estate in the property; and
- the Crown grant by letters patent or instrument of grant does not express an intention to convey a lesser interest in the property.

This is essentially unchanged from previous legislation.

Section 9 clarifies what is being conveyed in a grant of federal real property by letters patent or instrument of grant. It permits such a grant of federal real property to operate as an absolute conveyance of all of the Crown's interest in the property even when this is not specifically stated in the conveyancing instrument. It also clarifies that such a Crown grant can be a "fee simple" conveyance. Without section 9, specific words called "words of limitation" would have to be inserted in each such federal Crown grant to convey all the Crown's interest in the real property (fee simple).

Related General Questions

3.2.10 What are "words of limitation?"

Source

Modification of section 3 of the *Public Lands Grants Act*, which read:

" 3. Where under the laws of a province an instrument transferring land without words of limitation operates as an absolute transfer of all such right and title as the transferor has therein, a grant of public lands in that province, if Her Majesty has power to convey such an estate therein, and if no contrary or different intention is expressed in the grant, operates as a conveyance of an estate in fee simple or an equivalent estate in those lands, although no words of limitation are used in the grant."

Grants to Her Majesty

10. Her Majesty may grant federal real property to Herself.

Notes

Section 10 allows the federal Crown to grant federal real property to itself. Such grants must be authorized by the Governor in Council pursuant to paragraph 16(1)(i) of the FRPA.

Related General Questions

3.2.11 Why would the federal government want the right to be able to grant real property to itself?

Source

New.

Related Sections in FRPA, FRPRegs and TBRP

FRPA

- s. 16(1)(i): authority for grants to Her Majesty

Transfers of administration and control

11. (1) An instrument transferring administration and control of federal real property to Her Majesty in any right other than Canada pursuant to regulations made under paragraph 16(2)(e) shall be signed by the Minister having the administration of the property and countersigned by the Minister of Justice.

Idem

(2) A grant, vesting order or other conveyancing instrument in favour of Her Majesty in respect of any real property belonging to Her Majesty in any right other than Canada results, on its acceptance, in Her Majesty having administration and control of the property.

Notes

Subsection 11(1) states that a transfer of administration and control of federal real property from the federal government to

- a provincial government, or
- a foreign country in which Her Majesty holds the title to land

made under the regulations to this Act must be signed by the minister administering the real property and countersigned by the Minister of Justice. Thus it is treated, for signing purposes, like most dispositions under the FRPA.

Subsection 11(2) provides that a grant, transfer, or vesting order from a province, once accepted, results in a transfer of administration and control from the provincial to the federal Crown. This also applies to transfers from Her Majesty in right of any other Commonwealth country. This subsection was intended to clarify and confirm what is being transferred.

Related General Questions

- 3.4.3 What is the difference between "administration" and "administration and control?"
- 3.5.1 How did the FRPA affect transfers of administration and control between the federal and provincial Crowns?
- 3.5.2 Why must transfers of administration and control be satisfactory to and be countersigned by the Minister of Justice?
- 3.5.3 How and under what authority did the federal government accept transfers of administration and control prior to the FRPA?
- 3.5.4 What is a vesting order?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(1)(e): authority for transfers of administration and control from the federal government
- s. 16(1)(f): authority for accepting transfers of administration and control to the federal government
- s. 16(2)(e): regulations on transfers of administration and control from the federal government
- s. 16(2)(f): regulations on for accepting transfers of administration and control to the federal government

FRPRegs

- s. 5: ministerial authority for transfers and accepting transfers of administration and control

Restrictive covenants

12. A person who holds a lease of any real property from Her Majesty or an interest derived from such a lease, or who has a right to use or occupy any federal real property, may not, without the consent of the Governor in Council, grant or agree to any covenant restricting or controlling the use of the property except in favour of

- (a) Her Majesty;**
 - (b) any person through whom that interest or right was derived; or**
 - (c) in the case of a person holding such a lease or interest, any subtenant or licensee of that person.**
-

Notes

Section 12 prohibits a tenant or other person using or occupying federal real property from placing any restrictions on the use of the real property through, for example, restrictive covenants, without Governor in Council approval.

This provision is intended to deter, for example, a person who is leasing federal real property from attempting to restrict the use of the property in a way inconsistent with the lease from the Crown.

The section does allow the tenant or licensee to give such a covenant to:

- the Crown, as in the case where the tenant agreed in the lease to use the property only for a specific purpose;
- the person who sublet the property to the tenant or licensee, as in the case where a tenant of the Crown leased part of the property to a subtenant and that subtenant agrees with the tenant to use that part of the property only for a specific purpose; and
- a subtenant or licensee of the tenant, as in shopping centre leases, where a tenant may agree with a subtenant not to sublet any other space in the centre to a person carrying on the same type of business as the subtenant.

Section 12 provides additional protection for federal interests when federal real property is leased to tenants. An individual or a corporate entity could possibly attempt to control federal real property by obtaining a restrictive covenant from a tenant of the federal Crown. Such a covenant could be in conflict with the purposes and provisions of the original lease from the government. This situation has arisen in the past and the removal of the covenant by the government was complex and time-consuming. This section prohibits giving such a restrictive covenant without Governor in Council approval to prevent further occurrences of this situation.

Source

New.

**Acquisition
under
provincial Act**

13. Except as expressly authorized by or under an Act of Parliament, no person acquires any federal real property by virtue of a provincial Act.

Notes

Section 13 restricts the rights to acquire or take federal real property to those authorized by federal law. This ensures that no one can acquire federal property solely on the basis of any provincial legislation.

This reflects the constitutional legal position that the right to dispose of federal real property is a matter within the exclusive legal jurisdiction of the federal government.

Section 13 clarifies that provincial laws do not govern federal real property. It ensures that a person cannot acquire federal real property on the basis of any provincial legislation, unless specifically authorized by Parliament.

For example, section 13 was intended to protect the government's interests in superficies agreements on federal real property in Quebec. Under section 1116 of Quebec's new Civil Code, the equivalent of the right of private expropriation by a superficiary who has been permitted to construct on property and by another person applies if certain conditions are met. Section 13 forestalls the argument that a superficiary of federal real property in Quebec could have a right to acquire ownership of that property under the provisions of the Civil Code. Federal law should govern the acquiring and disposing of federal real property.

Is this an attempt by the federal government to limit the powers of a province to determine the rights of its citizens vis-à-vis real property? No. Section 13 only deals with federal real property and has nothing to do with provincially or privately held property in the provinces.

Source

New.

**No title by
prescription**

14. No person acquires any federal real property by prescription.

Notes

Section 14 states that adverse possession, or "squatters' rights," does not apply to federal real property. This provision is essentially unchanged from the previous legislation.

This section was first enacted in 1950 to bring federal real property in line with provincial real property in several provinces, where title by prescription had been abolished under provincial land titles legislation. There are also other reasons why the section is beneficial. As a matter of policy, federal real property is to be used for the benefit of the people of Canada. Therefore, one person should not be able to gain an interest in federal real property at the expense of all other Canadians without the Crown's knowledge and approval. Also, as a practical matter, the nature of much federal real property would make policing of "squatters" both impractical and expensive.

Title by prescription on federal real property may still be possible if the chain of possession started on or before June 1, 1890 and the prescriptive title was acquired before June 1, 1950. This is because before enacting this section in 1950, a person needed a 60-year period of adverse possession to obtain title by adverse possession against the federal Crown.

Source

Modification of section 5 of the *Public Lands Grants Act*, which read:

" 5. No right, title or interest in or to public lands is acquired by any person by prescription."

**Powers of
Minister of
Justice**

- 15. (1) The Minister of Justice may, for purposes of the acquisition or disposition of, or any dealing with, any real property, on behalf of Her Majesty,**
- (a) determine the type of instrument to be used therefor and settle and approve the form and legal content of any Crown grant or other instrument;**
 - (b) effect the delivery of any instrument, including the delivery of an instrument on terms or subject to conditions satisfactory to the Minister of Justice, whether or not the satisfaction or removal of the terms or conditions will result in the delivery becoming absolute;**
 - (c) give and accept such solicitors' undertakings as are in the opinion of the Minister of Justice necessary for or incidental to the completion of a real property transaction, including solicitors' undertakings respecting the delivery of any instrument and the payment of any purchase price or other moneys.**
-

Notes

Subsection 15(1) sets out the authority of the Minister of Justice to act as solicitor in federal Crown real property transactions. This authority includes the authority to:

- determine the type of instrument to be used in a government real property transaction;
- settle (i.e., finalize) and approve the form and legal content of federal Crown grants and other instruments;
- make "delivery" of documents; and
- give and accept undertakings relating to completing a real property transaction.

Section 15 was intended to clarify the role of the Minister of Justice in federal real property. Under the legislation and regulations prior to the FRPA, the Minister of Justice had an inconsistent role in real property management. Justice was greatly involved in certain types of transactions, such as grants by letters patent, and less involved in other transactions, such as leases. This situation needed to be changed, especially since complex types of real property transactions involving long-term leases require greater Justice involvement. The FRPA reconciled these inconsistencies.

Why was it necessary to provide the Minister of Justice with the powers referred to in subsection 15(1) of the FRPA? Subsection 15(1) clarified the authority of Justice solicitors to deliver documents on terms or subject to conditions and to give and accept undertakings. Private sector lawyers routinely exercise these powers on behalf of their clients in real property transactions.

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 5(1)(b): instruments of grant
- s. 5(3): provincial instruments
- s. 5(6): countersignature of grants
- s. 7(2): countersignature of plans
- s. 11(1): countersignature of transfers of administration and control
- s. 15(2): regulations
- s. 21: correction of defective grants

FRPRegs

- s. 9(3) setting and approving the form and legal content of a Crown grant

Regulations

- (2) The Governor in Council may, on the recommendation of the Minister of Justice and the Treasury Board, make regulations respecting
- (a) the referral of specified classes of transactions concerning real property within or outside Canada to the Minister of Justice for settlement and approval of the form and legal content of instruments or for other purposes; and
 - (b) the establishment and operation of a depository for the deposit of copies of instruments relating to federal real property other than instruments issued under the Great Seal.
-

Notes

Subsection 15(2) provides the authority for regulations to be made concerning:

- identifying classes of federal real property transactions for which the documents must be approved by the Minister of Justice; and
- establishing and operating a depository of federal Crown grants and conveyances.

These regulations are contained in sections 9 and 11, respectively, of the FRPRegs.

Related General Questions

- 3.6.1 What kinds of transactions are referred to the Minister of Justice?
3.6.2 Is the document depository necessary?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPRegs

- s. 9: referral of dispositions to the Minister of Justice
- s. 11: document depository

Powers of Governor in Council

16. (1) Notwithstanding any regulations made under subsection (2), the Governor in Council may, on the recommendation of the Treasury Board, in accordance with such terms and subject to such conditions and restrictions as the Governor in Council considers advisable,

Notes

This subsection provides the authorities for grants, acquisitions, governmental transfers and other authorities. The Treasury Board recommends authorizations that are subject to any terms and conditions imposed by the Governor in Council. The subsection 16(1) authorities are independent of any authorities given through regulations under subsection 16(2).

The authorities given under the subsection relate to:

- (a) disposing and leasing federal real property;
- (b) acquiring and leasing real property;
- (c) issuing, acquiring and transferring licences;
- (d) surrendering leases and relinquishing licences;
- (e)(f) transferring administration and control to and from provinces and other governments;
- (g) transferring administration;
- (h) granting federal real property to a corporation already administering the property;
- (i) granting federal real property to the federal Crown;
- (j) dedicating federal real property for roads, etc.; and
- (k) taking and discharging mortgages and other security.

Subsection 16(1) provides the authorities exercisable by the Governor in Council in relation to acquiring and disposing of real property. This allows the Governor in Council to approve real property transactions by Order in Council. The subsection 16(1) authorities are independent of any authorities given through regulations under subsection 16(2).

"Notwithstanding any regulations made under subsection (2)" was included to ensure that the GIC could authorize a transaction that is not or could not be authorized under the FRPRegs. Without this "notwithstanding" clause, it could be argued that any regulations made under 16(2) would occupy its field for transactions covered, and effectively remove the right of the Governor in Council to directly authorize them under s. 16(1). This would have in practice eliminated the intention of subsections 16(1) and (2), which was to have two parallel and alternative means of conducting transactions – ministerially conducted under 16(2) and GIC conducted under 16(1).

Policy Requirement 3 of Chapter 1-12 of the Real Property Volume of the Treasury Board Manual sets out restrictions placed on Treasury Board recommendations of transactions under subsection 16(1). The Treasury Board will grant recommendations:

- if the transactions would have been possible under the FRPRegs, but a minister feels that the Governor in Council's authorization is more appropriate; or
- if the transactions are not covered by the FRPRegs, such as a sale where the government takes back a mortgage for part of the purchase price.

Why should these authorities be exercised on the recommendation of the Treasury Board? To ensure that the government manages real property transactions consistently and efficiently. Eliminating the previous split responsibility between the Governor in Council and the Treasury Board in regulating and approving real property transactions is intended to help do this.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(2): regulations

TBRP

- chap. 1-12: GIC transactions under s. 16(1) of the FRPA

(a) authorize the sale, lease or other disposition of any federal real property for which sale, lease or disposition there is no provision in or under any other Act;

Notes

This paragraph provides general residual authority for the sale, lease or other disposition of federal real property.

Related General Questions

- 3.1.4 Why did the FRPA change the requirement that federal real property has to be either "surplus" or "not required for public purposes" before they can be sold or transferred?
- 3.1.5 What protection is there to ensure that real property required for public purposes is not disposed of?
- 3.1.6 Did the FRPA change the procedures for disposing of surplus lands?
- 3.1.7 How did the requirement limiting the disposal of federal real property to that "not required for public purposes" create difficulties in lease-leaseback agreements?

Source

Modification of paragraph 4(1)(a) of the *Public Lands Grants Act*, which read:

" 4. (1) *The Governor in Council may*
(a) authorize the sale, lease or other disposition of any public lands that are not required for public purposes and for the sale, lease or other disposition of which there is no other provision in the law"

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 4: prohibition on dispositions of federal real property
- s. 16(2)(a): regulations on the disposition of real property

FRPRegs

- s. 4(1): authority for ministerial dispositions

(b) authorize the purchase, lease or other acquisition of any real property on behalf of Her Majesty;

Notes

This paragraph provides general authority for purchasing, leasing or acquiring real property.

Related General Questions

3.1.8 Why was the authorization to acquire and dispose of property placed in the FRPA?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(2)(b): regulations on acquisitions

FRPRegs

- s. 4(1): authority for ministerial acquisitions

(c) authorize the giving or acquisition on behalf of Her Majesty of any licence or the transfer between Ministers of administrative responsibility in relation to any licence acquired by Her Majesty;

Notes

This paragraph provides authority for:

- giving licences with respect to federal real property;
- acquiring licences relating to non-federal real property; and
- transferring administrative responsibility for a licence from one minister to another.

Related General Questions

3.3.2 What is the difference between a lease and a licence?

3.4.7 Why was the wording "administrative responsibility" applied to licences rather than "administration" in the FRPA and the FRPRegs?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(2)(c): regulations on licences

FRPRegs

- s. 4(2): authority for ministerial actions relating to licences

(d) authorize, on behalf of Her Majesty, a surrender of any lease of which Her Majesty is the tenant or the relinquishment of any licence of which Her Majesty is the licensee, or the acceptance of the surrender of any lease of which Her Majesty is the landlord or the acceptance of the relinquishment of any licence of which Her Majesty is the licensor;

Notes

This paragraph authorizes the federal Crown to surrender leases or relinquish licences where the federal Crown is a tenant or licensee, respectively.

This paragraph also authorizes the acceptance of surrenders of leases and relinquishments of licences of federal real property.

Related General Questions

3.3.3 What is a surrender of a lease?

3.3.4 What is a relinquishment of a licence?

3.3.5 What did the FRPA change in the governmental processes relating to surrenders of leases and relinquishments of licences?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2: definition of licence
- s. 16(2)(d): regulations on surrenders of leases and relinquishments of licences

FRPRegs

- s. 2: definition of "acquisition"
- : definition of "disposition"
- s. 4(2): authority for ministerial actions relating to licences

(e) - transfer to Her Majesty in any right other than Canada administration and control of the entire or any lesser interest of Her Majesty in any federal real property, either in perpetuity or for any lesser term;

Notes

This paragraph provides authority for the Governor in Council to transfer the administration and control of federal real property to a province. The transfer can also be made to another British Commonwealth country.

Please note that only transfers to provinces are authorized under the FRPRegs. Transfers to another British Commonwealth country would have to be done with Governor in Council authority under subsection 16(1).

What would be a transfer of a "lesser interest?" The words "lesser interest" in this paragraph relate to an interest less than the entire interest of the federal Crown in the property. An example of a transfer of a lesser interest in federal Crown property (to which the federal Crown has clear and absolute title) would be granting an easement over the lands to a province.

Related General Questions

3.4.3 What is the difference between "administration" and "administration and control"?

3.5.1 How did the FRPA affect transfers of administration and control between the federal and provincial Crowns?

Source

Modification of Subsection 4(2) of the *Public Lands Grants Act*, which read:

" 4. (2) The Governor in Council may by order transfer to Her Majesty in any right other than Canada the administration and control of the entire or any lesser interest of Her Majesty in right of Canada in any public lands not required for public purposes, either forever or for any lesser term, and subject to any conditions, restrictions or limitations that the Governor in Council considers advisable"

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(2)(e): regulations on transfers of administration and control to other governments

FRPRegs

- s. 5(1): authority for ministerial transfers of administration and control to provinces

(f) accept, on behalf of Her Majesty, the transfer of administration and control of real property from Her Majesty in any right other than Canada, including any such transfer made by grant, vesting order or other conveyancing instrument;

Notes

This paragraph provides the statutory authority for the federal government to accept transfers of administration and control of provincial Crown property, which had prior to the FRPA been accepted through the Royal Prerogative. This authority includes any transfers made by a grant, vesting order or other conveyancing instrument.

The paragraph could also apply to accepting transfers of administration and control from other Commonwealth countries. Only acceptances of transfers from provinces are allowed under the FRPRegs. Acceptances of transfers from another British Commonwealth country would have to be done with Governor in Council authority under subsection 16(1).

This paragraph allows the federal Crown to accept a transfer of provincial Crown property regardless of the instrument by which the province desires to transfer the property. If the transfer is accepted by the federal Crown, it amounts to a transfer of administration and control of real property. The paragraph removes any question of whether the federal Crown's right to accept a transfer of provincial Crown property is limited to certain types of instruments used for the transfer.

Related General Questions

3.5.3 How and under what authority did the federal government accept transfers of administration and control prior to the FRPA?

3.5.4 What is a vesting order?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(2)(f): regulations on the acceptances of transfers of administration and control from other governments

FRPRegs

- s. 5(2): authority for ministerial acceptances of transfers of administration and control from provinces

(g) notwithstanding any other Act, transfer the administration of any federal real property from one Minister to another, from a Minister to an agent corporation or from an agent corporation to a Minister;

Notes

This paragraph provides the authority to transfer the administration of any federal real property to a minister or an agent corporation.

Any such transfer may be made notwithstanding the provisions of any other Act of Parliament. This "notwithstanding" clause was inserted to clarify that transfers of administration may be made pursuant to the FRPA to and from any department or agent corporation. Many statutes relating to departments or agent corporations do not specifically mention the concept of administration of real property. Inserting the "notwithstanding" clause was intended to deter questioning of legal authority relating to transfers of administration. Please note that the "notwithstanding" clause is not found in paragraph 16(2)(g).

Why aren't transfers of administration to non-agent Crown corporations covered in this paragraph? Non-agent Crown corporations are not acting as agents of the Crown and are therefore treated like any other non-governmental person, thus what would normally take place is a transfer of title rather than a transfer of administration.

Related General Questions

3.4.6 Why are transfers of administration made?

3.4.3 What is the difference between "administration" and "administration and control?"

Source

Modification of section 36 of the *Public Works Act*, which read:

" 36. (1) The Governor in Council may transfer the management, charge and direction of any public work, or any power, duty or function with respect to any work or class of works, whether public or private, that is assigned to or vested by statute in any minister or department, to any other minister or department, and from the date appointed for that purpose by the Governor in Council, that power, duty or function shall be transferred to and vested in that other minister or department, and the provisions of this Act, in so far as they are applicable, apply to any work or property the maintenance, repair, control or management of which is transferred under this section.

(2) Any transfer referred to in subsection (1) may be made although the subject-matter thereof has previously been transferred from one department to another under the authority of this section."

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "administration"
- s. 16(2)(g): regulations on transfers of administration
- s. 18: administration

FRPRegs

- s. 6: authority for ministerial transfers of administration

(h) authorize a grant of any federal real property, the title to which is vested in Her Majesty, to a corporation that has the administration of the property or to any person designated by that corporation.

Notes

This paragraph provides and clarifies the authority to grant federal real property to a corporation administering the property or to its nominee. This makes it possible for a Crown corporation, that only has the authority to dispose of or lease real property held in the corporation's name, to be granted the real property and thus be able to lease or otherwise dispose of it.

It also provides authority for the granting of the property to a person designated by the corporation. The intention here was to provide an alternative to what was the practice of having a two-step process in such transactions. For example, if a corporation administering a property wanted to sell that property to a purchaser, the corporation would first get letters patent from the Crown to the corporation and then the corporation would give a deed to the purchaser. Paragraph 16(1)(h) allows letters patent to be issued to a person designated by the corporation.

The word "corporation," rather than "Crown corporation" or "agent Crown corporation" was used because there are entities, such as harbour commissions which are neither a Crown corporation nor an agent Crown corporation, that administer federal property.

Please note that a minister could not dispose of these properties as they are not under the minister's administration.

What kinds of corporations are eligible to be granted federal real property under paragraph 16(1)(h)? Under this paragraph, any corporation that administers federal real property is eligible to be granted that property. This is subject, of course, to the Crown, and not the corporation, having title to the real property.

Who is the "any person" indicated in paragraph 16(1)(h) on grants of federal real property to Crown corporations? These words were added to this paragraph to allow for a grant to be made directly to a third party if a corporation administering real property wishes to have that property transferred to the third party.

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "administration"
- s. 9: grants to Her Majesty
- s. 18: administration

(i) authorize the grant by Her Majesty of any federal real property to Herself;

Notes

This paragraph authorizes the granting of federal real property to the federal Crown.

The provision was intended to resolve some technical problems with certain land registration systems that preclude the registration of some federal public lands.

Prior to the FRPA, the federal Crown was unable to grant land to itself.

This technically barred ungranted federal lands from being included in provincial land registries which require a Crown grant for a first registration. Some provinces (e.g., British Columbia) that operate under a Torrens system require a grant.

Section 10 of the *Federal Real Property Act* removed that barrier and allows registration in those provinces.

Related General Questions

1. Why would the federal government want the right to be able to grant real property to itself?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 10: grants to Her Majesty

(j) dedicate or authorize the dedication, for so long as the dedication or authorization remains unrevoked, of any federal real property for a road, park or other public purpose, either in perpetuity or for any lesser term; or

Notes

This paragraph provides the authority for dedicating federal real property for public purposes, such as a road or park. The paragraph leaves open the possibility that the dedication can be revoked at a later date.

Paragraph 16(1)(j) provides additional flexibility in federal conveyancing by authorizing the Governor in Council to use additional means to dedicate federal real property as a road, park, or other public purpose. This allows the Governor in Council to use plans, pursuant to section 7 of the FRPA, to dedicate public property, a convenient practice in some provinces.

There is no provision for ministerial dedications under the FRPRegs.

How were these dedications done prior to the FRPA? Dedications were not done previously, although the same thing was accomplished by way of a grant of real property which is conditional upon the property being used for a specified public purpose. Before the FRPA, the federal Crown usually used these "conditional" grants to convey federal real property to municipalities for highway purposes.

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 7: plans

(k) authorize the acceptance or the release or discharge, in whole or in part, on behalf of Her Majesty, of any security, by way of mortgage or otherwise, in connection with any transaction authorized under this Act.

Notes

This paragraph provides authority for taking and discharging a mortgage or other security in connection with any transaction under this Act. Note that the FRPRegs do not allow this to be done in sales under the Regulations. Therefore, Governor in Council authority under this paragraph would be needed.

Why is this paragraph needed? It is not always possible or advantageous to dispose of federal real property if the whole of the purchase price is to be paid by the purchaser on closing. Recently, there have been an increasing number of occasions where, because of the amount of the purchase price, the marketability of the property, and other considerations, it is either necessary or advantageous to the disposition that the transaction be structured to provide for the payment of (and security for the payment of) the purchase price after the transaction closes. In these cases the Crown must take security and be able to discharge such a security. The paragraph clarifies the authority to take such security and accept payments over time on account of the purchase price of real property disposed of by the Crown.

Related General Questions

3.1.9 Why would the Crown want to finance a purchase of real property?

3.1.10 Why would the Crown want to take a security to guarantee a part of the payment for real property?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(2)(h): regulations on mortgages and other securities

FRPRegs

- s. 3(1)(b): non-application

Regulations

16. (2) The Governor in Council may, on the recommendation of the Treasury Board, make regulations

Notes

This subsection provides the Governor in Council with the authority to make regulations under this Act. Any regulations made must be recommended by the Treasury Board.

Regulations under the FRPA may be in the following areas:

- (a) disposing and leasing federal real property;
- (b) acquiring and leasing real property;
- (c) issuing, acquiring and transferring licences;
- (d) surrendering leases and relinquishing licences;
- (e) transferring administration and control to other governments;
- (f) transferring administration and control from other governments;
- (g) transferring administration;
- (h) taking and discharging of mortgages and other securities;
- (i) providing and charging for utilities and other services on or from federal property;
- (j) fees for copies of documents; and
- (k) interest on purchase money or rent on federal real property.

Subsection 16(2) provides the authorities exercisable by the Governor in Council to make regulations relating to acquiring and disposing of real property by the federal government. The subsection 16(2) authorities are independent of any authorities given to the Governor in Council under subsection 16(1).

Why should the regulations be made on the recommendation of the Treasury Board? To ensure that the government manages real property transactions consistently and efficiently. Eliminating the previous split responsibility between the Governor in Council and the Treasury Board in regulating and approving real property transactions is intended to help do this.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 15(2): regulations
- s. 16(1): GIC Authorities

- (a) **respecting the sale, lease or other disposition of federal real property for which sale, lease or disposition there is no provision in or under any other Act;**
-

Notes

This paragraph provides the residual authority to make regulations respecting the sale, lease or other disposition of federal real property.

Related General Questions

3.1.8 Why was the authorization to acquire and dispose of property placed in the FRPA?

Source

Modification of paragraphs 4(1)(a) and (b) of the *Public Lands Grants Act*, which read:

" 4. (1) *The Governor in Council may*

(a) *authorize the sale, lease or other disposition of any public lands that are not required for public purposes and for the sale, lease or other disposition of which there is no other provision in the law;*

(b) *make regulations authorizing the Minister having the management, charge and direction of any such public lands to sell, lease or otherwise dispose of them, subject to such limitations and conditions as the Governor in Council may prescribe;"*

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(1)(a): GIC authorization of dispositions

FRPRegs

- s. 4(1): authority for ministerial dispositions

(b) respecting the purchase, lease or other acquisition of real property on behalf of Her Majesty;

Notes

This paragraph provides the general authority for regulations relating to acquiring or leasing real property.

Related General Questions

3.1.8 Why was the authorization to acquire and dispose of property placed in the FRPA?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(1)(b): GIC authorization of acquisitions

FRPRegs

- s. 4(1): authority for ministerial acquisitions

(c) respecting the giving and acquisition of licences on behalf of Her Majesty and the transfer between Ministers of administrative responsibility in relation to licences acquired by Her Majesty;

Notes

This paragraph provides the authority for regulations relating to issuing licences with respect to federal real property, acquiring licences on non-federal real property, assigning licences, and transferring administrative responsibility for a licence between ministers.

Related General Questions

3.3.2 What is the difference between a lease and a licence?

3.4.7 In the FRPA and the FRPRegs, why was the wording "administrative responsibility" and not "administration" applied to licences?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. (c): GIC authorization of licences

FRPRegs

- s. 4(2): authority for ministerial actions relating to licences

(d) respecting the surrender of leases of which Her Majesty is the tenant and the relinquishment of licences of which Her Majesty is the licensee, and the acceptance of surrenders of leases of which Her Majesty is the landlord and the acceptance of relinquishments of licences of which Her Majesty is the licensor;

Notes

This paragraph provides authority for regulations relating to

- surrendering leases and relinquishing licences, and
- accepting surrenders of leases and relinquishments of licences.

Related General Questions

3.3.3 What is a surrender of a lease?

3.3.4 What is a relinquishment of a licence?

3.3.5 What did the FRPA change in the governmental processes relating to surrenders of leases and relinquishments of licences?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(1)(d): GIC authorization of surrenders and relinquishments and acceptances of surrenders of leases and relinquishments of licences.

FRPRegs

- s. 2: definition of "acquisition"
- ????: definition of "disposition"
- s. 4(2): authority for ministerial actions relating to licences

(e) respecting the transfer to Her Majesty in any right other than Canada, by instrument satisfactory to the Minister of Justice, of administration and control of the entire or any lesser interest of Her Majesty in federal real property, either in perpetuity or for any lesser term;

Notes

This paragraph provides the authority for regulations respecting transfers of administration and control of federal real property to

- a province, or
- another British Commonwealth country.

Under subsection 11(1) of the Act such transfers must be signed by the minister administering the property and countersigned by the Minister of Justice.

Please note that the FRPRegs authorize transfers to provinces only. Transfers to another British Commonwealth country require Governor in Council authority under subsection 16(1).

Related General Questions

- 3.5.2. Why must transfers of administration and control be satisfactory to and countersigned by the Minister of Justice?
- 3.4.3 What is the difference between "administration" and "administration and control?"
- 3.5.1 How did the FRPA affect transfers of administration and control between the federal and provincial Crowns?
- 3.5.5 What would be a transfer of a "lesser interest?"

Source

Modification of subsection 4(2) of the *Public Lands Grants Act*, which read:

" 4. (2) The Governor in Council may by order transfer to Her Majesty in any right other than Canada the administration and control of the entire or any lesser interest of Her Majesty in right of Canada in any public lands not required for public purposes, either forever or for any lesser term, and subject to any conditions, restrictions or limitations that the Governor in Council considers advisable."

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 11(1): signing of transfers of administration and control
- s. 16(1)(e): GIC authorization of transfers of administration and control to other governments

FRPRegs

- s. 5(1): authority for ministerial transfers of administration and control to provinces

(f) respecting the acceptance, on behalf of Her Majesty, of transfers of administration and control satisfactory to the Minister of Justice of real property from Her Majesty in any right other than Canada, including such transfers made by grant, vesting order or other conveyancing instrument;

Notes

This paragraph provides the authority for regulations respecting the acceptance of transfers of administration and control from

- a provincial Crown, or
- another British Commonwealth country.

Such transfers must be satisfactory to the Minister of Justice.

The FRPRegs allow acceptances of transfers from provinces only. Acceptances of transfers from another British Commonwealth country require Governor in Council authority under subsection 16(1).

This paragraph allows the federal Crown to accept a transfer of provincial Crown property regardless of the instrument by which the province desires to transfer the property. If the transfer is accepted by the federal Crown, it amounts to a transfer of administration and control of real property. The paragraph removes any question of whether the federal Crown's right to accept a transfer of provincial Crown property is limited to certain types of instruments used for the transfer.

Related General Questions

- 3.5.3. How and under what authority did the federal government accept transfers of administration and control prior to the FRPA?
- 3.5.2 Why must the Minister of Justice be satisfied with and countersign transfers of administration and control?
- 3.5.4 What is a vesting order?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 11(2): effect of transfers from other governments
- s. 16(1)(f): GIC acceptance of transfers of administration and control from other governments

FRPRegs

- s. 5(2): authority for ministerial acceptances of transfers of administration and control from provinces

(g) respecting the transfer of the administration of federal real property by one Minister to another, by a Minister to an agent corporation or by an agent corporation to a Minister;

Notes

This paragraph provides the authority for regulations respecting transfers of administration between ministers and between a minister and an agent corporation.

Why aren't transfers of administration to non-agent Crown corporations covered in this paragraph? Non-agent Crown corporations do not act as agents of the Crown and are therefore treated like any other non-governmental person.

Related General Questions

3.4.6 Why are transfers of administration made?

3.4.3 What is the difference between "administration" and "administration and control?"

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "administration"
- s. 16(1)(j): GIC transfers of administration
- s. 18: administration

FRPRegs

- s. 6: authority for ministerial transfers of administration

(h) respecting the acceptance or the release or discharge, in whole or in part, on behalf of Her Majesty, of any security, by way of mortgage or otherwise, in connection with transactions authorized under regulations made pursuant to this subsection;

Notes

This paragraph provides the authority for regulations respecting the taking and discharging of mortgages or other security documents in connection with any transaction authorized pursuant to this subsection. Note that the FRPRegs do not allow this in sales under the regulations. Therefore, Governor in Council authority under paragraph 16(1)(k) would be needed.

Why is this paragraph needed? It is not always possible or advantageous to dispose of federal real property if the whole of the purchase price is to be paid by the purchaser on closing. Recently, there have been an increasing number of occasions where, because of the amount of the purchase price, the marketability of the property, and other considerations, it is either necessary or advantageous to the disposition that the transaction be structured to provide for the payment of (and security for the payment of) the purchase price after the transaction closes. In these cases there is a need for the Crown to take security and to be able to discharge such a security. The paragraph clarifies the authority to take such security and accept payments over time on account of the purchase price of real property disposed of by the Crown.

Related General Questions

3.1.9 Why would the Crown want to finance a purchase of real property?

3.1.10 Why would the Crown want to take a security to guarantee a part of the payment for real property?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(1)(k): GIC authorization of mortgages or other security

FRPRegs

- s. 3(1)(b): non-application

- (i) authorizing the provision of utilities and other services on or from federal real property and the imposition of fees, charges and rates for those services;**
-

Notes

This paragraph provides the authority for regulations relating to the charging for utilities or other services on federal real property.

This paragraph was included in the FRPA to clarify the legal authority for the existing practice.

Related General Questions

3.1.11 Did the FRPA cause the rent or utility charges to tenants on public lands to increase?

3.1.12 Does this contradict section 19 of the FAA?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPRegs

- s. 4(3): authority for ministerial provision of services and charging of fees

(j) imposing fees for the provision of copies of maps, plans, field notes, documents, papers and other records pertaining to federal real property, for the preparation of documents evidencing a sale, lease or other disposition of federal real property and for the deposit in a department of documents relating to federal real property; and

Notes

This paragraph authorizes the Governor in Council to prescribe a tariff of fees for documents pertaining to federal real property. This is essentially unchanged from previous legislation.

There are no such regulations to date in the FRPRegs. The provision was carried over from the previous legislation in case regulations were needed in the future.

Source

Modification of paragraph 4(1)(c) of the *Public Lands Grants Act*, which read:

" 4. (1) *The Governor in Council may*

(c) prescribe a tariff of fees for copies of maps, plans, field notes, documents, papers and other records pertaining to public lands, for the preparation of documents evidencing a sale, lease or other disposition of public lands and for the registration in any government department of any documents pertaining to public lands; and"

(k) establishing a formula for determining the rate of interest to be paid with respect to the purchase money, rent or other consideration for any federal real property sold, leased, licensed or otherwise dealt with under this Act.

Notes

This paragraph provides authority for establishing a formula for determining the interest rate to be paid for or on account of:

- the purchase money; or
- the rent or other consideration

of any federal real property sold, leased, licensed or otherwise dealt with under the FRPA.

This modifies the previous legislation, which required a fixed interest rate.

There are no such regulations to date in the FRPRegs. The provision was carried over from the previous legislation in case regulations were needed in the future.

Why was a change made from a fixed interest rate? The change was made to provide flexibility to reflect current practices. A fixed interest rate would require parliamentary approval to be changed.

What formula would be used and how would it work? Although the interest rate formula has not yet been determined, it is anticipated that such a formula would be based on a standard base, such as the Bank of Canada rate, and include a reasonable surcharge.

Source

Modification of paragraph 4(1)(d) of the *Public Lands Grants Act*, which read:

"(d) fix the rate of interest to be paid for or on account of the purchase money or rent of any public lands sold or leased under this Act."

Exercise of powers

16. (3) A Minister may authorize in writing any other Minister to exercise on his behalf any power in relation to any transaction that has been or may be authorized under subsection (1) or under regulations made pursuant to subsection 16(2).

Notes

Subsection 16(3) states that a minister may be authorized, in writing, to exercise any powers given to another minister in relation to a transaction under this Act.

This section, and subsection 16(3), were intended to allow for managerial flexibility in applying the Act and its Regulations. These sections were inserted to clarify authority for delegating within or between departments. They were also felt to be needed because the FRPA repealed the authority for the Minister of Public Works to dispose of real property declared surplus under the *Surplus Crown Assets Act*. The policy intention behind this subsection, and section 3, was to make it at least as easy, if not easier, to delegate powers to an agent, usually PWGSC, as it was prior to the FRPA.

During the drafting of the FRPA combining section 3 and subsection 16(3) was discussed, as they both dealt with delegating authority. This was not done, however, for two main reasons:

- subsection 16(3) had to stay in section 16 because it specifically refers to transactions under that section; and
- it was felt important for "optics" to have a delegation provision at the front of the Act.

Related General Questions

3.1.1 Why should there be authority for interdepartmental delegation of authority?

Source

New, based in principle on an extension of section 6 of the *Public Lands Grants Act*, which pertained solely to leases and read:

" 6. All leases of public lands issued by special authority of the Governor in Council or pursuant to any regulation of the Governor in Council may be executed on behalf of Her Majesty by the Minister having the management, charge and direction of those lands or by some person thereunto authorized by the Minister."

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 3: Delegation and authorization

Limits and restrictions

16. (4) The Treasury Board may, generally or with respect to any Minister, establish financial or other limits, restrictions or requirements respecting any transaction or class of transactions authorized under regulations made pursuant to subsection (2).

Notes

This subsection provides authority to the Treasury Board to establish financial and other limits, restrictions and requirements for any transactions or classes of transactions authorized pursuant to the FRPRegs. The limits or restrictions can be general or specifically directed at a department. Financial limits are contained in chapter 1-12 of the Real Property volume of the *Treasury Board Manual*. That volume as well as other volumes of the Manual contain other restrictions and requirements.

Please note the discussion in s. 16(5) relating to the legal effect of these limits or restrictions. The Treasury Board limits do not affect the legal validity of transactions or the legal authority to conduct them.

Related General Questions

3.1.13 What are the specific powers and authorities of Treasury Board under the FRPA?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(5): legal effect of TB and FAA s. 41 limits/restrictions

TBRP

- chap. 1-12: authority levels

Saving

16. (5) No limit, restriction or requirement established under subsection (4) and no regulation or direction made under section 41 of the *Financial Administration Act* derogates from the authority of a Minister under this Act to enter into a transaction or affects the validity of a transaction entered into pursuant to such authority.

Notes

Subsection 16(5) states that

- no transaction under the FRPA is invalid, and
- no minister is without legal authority to enter into a transaction authorized under the Act only because
- a limit, restriction or requirement established by the Treasury Board under subsection 16(4) has been contravened.
- a regulation or direction under section 41 of the FAA has been contravened.

What is the purpose of subsection 16(5)? Under subsection 16(4) of the FRPA, the Treasury Board can establish financial or any other limits or restrictions relating to any transaction authorized under the Regulations. These limits and restrictions, contained in Treasury Board policy rather than the FRPA or in regulations, are one means by which Treasury Board exercises its mandate of managing federal real property. Ministers must seek Treasury Board approval for transactions that exceed the authority limits and restrictions. The limits and restrictions may vary from minister to minister, depending on differences in departmental expertise in real property conveyancing. Because these limits and conditions are established for the internal management of federal real property transactions, they do not affect the validity or authority for the transactions. Subsection 16(5) of the Act specifically states that no transaction under the Act will be invalid solely because the Treasury Board policy limits or conditions were not followed. In addition, section 41 of the FAA authorizes the Governor in Council to make regulations and directions concerning the government entering into contracts. The FRPA is meant to be the general authority for the real property transactions by the federal government. Therefore, the authorities contained in or under the FRPA will also not be affected by any regulations or directions under section 41 of the FAA.

Source

Subsection 16(5) is new and is an adaptation of the common law "indoor management rule."

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 16(1): authorities for acquisition and disposition of real property
- s. 16(2): regulations on acquisition and disposition of real property
- s. 16(4): Treasury Board limits and restrictions

TBRP

- s. chap. 1-12: authority levels

Consideration

16. (6) Notwithstanding the *Financial Administration Act*, where a lease of federal real property or a licence in respect of federal real property is authorized under this Act, the amount of the rent or other consideration charged for the lease or licence may, subject to the order or regulations by which it is authorized, be less than, equal to or more than the costs borne by Her Majesty in relation to the property.

Notes

This subsection states that the amount of rent or consideration paid for federal real property can be below, equal to, or greater than the costs borne by the Crown in relation to the property. Such costs could be those incurred in providing the federal real property or the use thereof. This rule is subject to any terms or conditions authorized under this Act for the lease or licence.

Subsection 16(6) was intended to clarify the law. For many years, the government has used market-based rentals as the common method of charging when granting leases or licences of federally owned property. This subsection clarified the authority for this long-established practice. However, subsection 16(6) does not limit the government's flexibility to decide not to charge market rents or to exclude charging certain classes of users when warranted on policy grounds.

However, government policy stipulates that all disposals, including licences, should be at market value.

In addition, subsection 16(6) does not affect property for which special provisions for setting rental rates are already provided under legislation such as the *National Parks Act*, the *Territorial Lands Act*, and the *Fishing and Recreational Harbours Act*.

Several recent statutes have contained provisions relating to departments charging fees for the use of facilities. Subsection 16(6) only overrides the FAA on the relation of rent and licence fees to cost.

Why does the subsection allow the charging of rent or licence fees above or below the cost to the government? The general rule to be followed in charging rent or licences is that the market rate should be charged. Allowing the charging of rent or licence fees above cost will make it possible to follow this general rule when market rates are significantly higher than cost. On the other hand, there may be occasions when below-cost and/or below-market charges are warranted to promote a government program.

Related General Questions

3.1.12 Does this contradict section 19 of the FAA?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

TBRP

- chap. 1-4: revenue

16. (7) Where a purchase, lease or other acquisition of real property in a condominium project, co-operative project or similar project is authorized under this Act, that authorization also constitutes the authority for the acquisition of a share, membership interest or ownership interest in the relevant condominium corporation, co-operative corporation or similar corporation, to the extent that the acquisition of the share, membership interest or ownership interest is required by, or effected by, the law of the jurisdiction in which the project is situated. (1994, c.26, c.31)

Notes

This subsection, added to the FRPA in 1994 as part of a miscellaneous statute amendment bill, resolves a technical legal problem that could arise when the government is acquiring property in a condominium, co-operative or similar project, whether in Canada or elsewhere.

The laws relating to condominiums and co-operatives are not uniform worldwide. (For example, each province in Canada has its own unique condominium statute.) However, many of these laws, both Canadian and foreign, provide that an acquisition of a condominium or similar property be accompanied by the acquisition of a share or interest in the corporation governing the condominium or similar project.

The problem for the federal government is that paragraph 90(1)b of the FAA prohibits anyone from acquiring for the government shares or interests in a corporation without parliamentary approval. But an unintended result was that, without subsection 16(7), specific parliamentary approval would be necessary to buy a condominium or co-operative unit in many jurisdictions. This would have created substantial problems for departments, such as the Department of Foreign Affairs and International Trade, because condominiums are in some locations the most practical form of federal accommodation.

Please note that this provision only applies when the law in the jurisdiction:

- requires that a share or interest be acquired when purchasing or leasing the unit; or
- the share or interest is automatically acquired by operation of law when purchasing or leasing the unit.

If neither of these conditions apply, parliamentary approval would still be required to acquire a share or interest in a condominium or similar corporation.

Source

New.

Territorial lands

17. (1) Notwithstanding section 3 of the *Territorial Lands Act*, sections 13 to 16 and 19 of that Act apply in respect of all federal real property in the Yukon Territory and the Northwest Territories.

Administration of reserved property

17. (2) Where any federal real property in the Yukon Territory or in the Northwest Territories is granted in fee simple under this Act, the Minister of Indian Affairs and Northern Development has the administration of such property and rights as are reserved from the grant by virtue of subsection (1).

Idem

17. (3) Where an interest other than the fee simple in any federal real property in the Yukon Territory or the Northwest Territories that is under the administration of a Minister is granted under this Act, that Minister retains the administration of such property and rights as are reserved from the grant by virtue of subsection (1).

Notes

Subsection 17(1) can make all sales, leases, or other dispositions of federal real property in the Yukon or the Northwest Territories made pursuant to this Act contain the same restrictions and reservations to the Crown as those contained in sections 13 through 16 and section 19 of the *Territorial Lands Act*.

This section has been amended to include a reference to Nunavut. However, this amendment will not come into force until April 1, 1999, or an earlier date if ordered by the Governor in Council. [The amendment is included below.]

Why make the same reservations to the Crown mandatory in the territories when the Crown can grant real property with different reservations throughout the rest of Canada? The *Territorial Lands Act* was intended to be the primary vehicle by which to grant federal real property in the territories, and the mineral and other reservations were meant to apply to all grants made under that Act. Whereas Her Majesty always has the power to grant property with reservations specific to the property being granted, the differences which existed prior to the FRPA in the reservations on property granted in the territories is not due to any differences specific to the property being granted, but only because the property was administered by different ministers and was therefore granted under different Acts. Section 17 of the FRPA ensures that a uniform set of reservations is made in every Crown grant in the territories, while preserving the right to make any further reservations that could be relevant to the specific property being granted.

Subsection 17(2) states that the Minister of Indian Affairs and Northern Development shall administer the rights reserved by the application of subsection 17(1) in those cases where all the Crown's interest is being conveyed (a fee simple conveyance). This is for consistency with the *Territorial Lands Act*, under which the Minister of Indian Affairs and Northern Development administers the rights reserved under that Act.

Subsection 17(3) states that in those cases where less than all the Crown's interest is being conveyed, such as in a lease, the minister administering the property can administer the rights reserved by the application of subsection 17(1).

Why do subsections 17(2) and (3) differentiate between fee simple and non-fee simple grants of federal real property in the territories? In fee simple grants of federal real property in the territories, by virtue of subsection 17(1) of this Act, the only interests that the federal Crown retains in the property are those reserved by sections 13 through 16 and 19 of the *Territorial Lands Act*. Under that Act, the Minister of Indian Affairs and Northern Development administers these reserved interests. For continuity, it was decided to retain that administration as any other minister who conveyed the property in fee simple would have no further interest in the property. In cases of a less than fee simple conveyance, such as a lease, the minister administering the property would still retain an interest in the property (aside from the rights reserved by virtue of subsection 17(1)). Therefore, it makes sense for that minister to administer all the Crown's interests in that property, including the interests reserved in sections 13 through 16 and 19 of the *Territorial Lands Act*.

The Nunavut amendment (S.C. 1993, c. 28, Sch. III, s. 58) reads as follows:

"Territorial lands

17. (1) Notwithstanding section 3 of the *Territorial Lands Act*, sections 13 to 16 and 19 of that Act apply in respect of all federal real property in the Yukon Territory, the Northwest Territories and Nunavut.

Administration of reserved property

17. (2) Where any federal real property in the Yukon Territory, the Northwest Territories or Nunavut is granted in fee simple under this Act, the Minister of Indian Affairs and Northern Development has the administration of such property and rights as are reserved from the grant by virtue of subsection (1).

Idem

17. (3) Where an interest other than the fee simple in any federal real property in the Yukon Territory, the Northwest Territories or Nunavut that is under the administration of a Minister is granted under this Act, that Minister retains the administration of such property and rights as are reserved from the grant by virtue of subsection (1)."

Related General Questions

3.1.14 What did the FRPA change in regard to real property in the Yukon and Northwest Territories?

3.3.6 What is fee simple?

Source

New.

**Administration
by Minister**

18. (1) Federal real property purchased, leased or otherwise acquired for the purposes of a Minister's department, including any such property acquired by way of a transfer of administration and control from Her Majesty in any right other than Canada, is under the administration of that Minister for the purposes of that department.

Notes

Subsection 18(1) states that real property acquired by any means for the purposes of a minister's department is administered by that minister. This is consistent with Treasury Board policy relating to acquisitions.

The purpose of this section is to confirm the direct link between the minister and the department for whose purposes the property was acquired. For example, the link for property used by the National Archives would be between the National Archives, a department as that term is defined under the FRPA, and the appropriate minister for the Archives, regardless of any other departments in that minister's portfolio.

Related General Questions

- 3.4.1 What is "administration" of federal real property?
- 3.4.4 What are the main responsibilities of a minister in relation to the real property he or she administers?
- 3.4.6 Why are transfers of administration made?
- 3.4.3 What is the difference between "administration" and "administration and control?"

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "administration"
- s. 16(1)(g): GIC authorization of transfers of administration
- s. 16(2)(g): regulations on transfers of administration
- s. 17(2): administration of reserved interests in fee simple grants
- s. 17(3): administration of reserved interests in non-fee simple grants
- s. 18(2): ministerial administration
- s. 18(3): continuity of administration
- s. 18(4): consequences of administration
- s. 18(5): administration of departmental property

TBRP

- chap. 1-2: administration

FRPRegs

- s. 6: transfer of administration or administrative responsibility

Idem

18. (2) Where a Minister has, in relation to a department, by or under any Act or any order of the Governor in Council, the "administration", "management", "administration and control", "control, management and administration", "management, charge and direction" or another similarly expressed power in relation to any federal real property, such property is under the administration of that Minister for the purposes of that department.

Notes

This subsection states that a minister who, pursuant to a federal Act or an Order in Council, has the

- administration,
 - administration and control,
 - control, management and administration,
 - management, charge and direction, or
 - any similarly expressed power
- over any federal real property, administers that property.

The subsection makes it clear that the word "administration" did not have to be used in the federal Act or Order in Council.

Related General Questions

- 3.4.5 Did the coming into force of the FRPA affect the administration held by a minister?
3.4.2 Why was the change made to "administration?"

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "administration"
- s. 16(1)(g): GIC authorization of transfers of administration
- s. 16(2)(g): regulations on transfers of administration
- s. 17(2): administration of reserved interests in fee simple grants
- s. 17(3): administration of reserved interests in non-fee simple grants
- s. 18(1): acquisitions and administration
- s. 18(3): continuity of administration
- s. 18(4): consequences of administration
- s. 18(5): administration of departmental property
- s. 18(6): administration by corporation

FRPRegs

- s. 6: transfer of administration or administrative responsibility

Continuity of administration

18. (3) Federal real property that is under the administration of a Minister for the purposes of a department remains under the administration of that Minister for the purposes of that department until a change of administration is effected pursuant to section 16 or on the authority or direction of the Governor in Council.

Notes

Subsection 18(3) states that a minister shall administer federal Crown lands until a change of administration is made in accordance with this Act or on the authority of the Governor in Council.

Related General Questions

- 3.4.5 Did the coming into force of the FRPA affect the administration held by a minister?
- 3.4.6 Why are transfers of administration made?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "administration"
- s. 16(1)(g): GIC authorization of transfers of administration
- s. 16(2)(g): regulations on transfers of administration
- s. 17(2): administration of reserved interests in fee simple grants
- s. 17(3): administration of reserved interests in non-fee simple grants
- s. 18(1): acquisitions and administration
- s. 18(2): Ministerial administration
- s. 18(4): consequences of administration
- s. 18(5): administration of departmental property
- s. 18(6): administration by corporation

FRPRegs

- s. 6: transfer of administration or administrative responsibility

Consequences of administration

18. (4) Where any federal real property is under the administration of a Minister for the purposes of a department, the Minister has the right to the use of that property for the purposes of that department, subject to any conditions or restrictions imposed by or under this or any other Act or any order of the Governor in Council, but is not entitled by reason only of the administration of the property to dispose of it or to retain the proceeds of its use or disposition.

Notes

Subsection 18(4) describes the legal effect of a minister administering federal real property. Under the subsection, the minister can use the particular federal Crown lands for the purposes of one of his or her departments. The right to use the property is subject to any applicable conditions or restrictions.

Subsection 18(4) makes it clear that simply because a minister administers a property does not necessarily mean that he or she has the right to dispose of the property or to retain the proceeds of its use or disposition. In practice, the FRPRegs (s.4) give ministers the authority to dispose of the property that they administer. In addition, Treasury Board policy discusses circumstances when retaining proceeds may be possible.

Does this mean a minister doesn't have the right to acquire or dispose of real property?

No. The section states that a minister administering federal real property has the right to use the property for the purposes of his or her department. The minister may also have the right to dispose of or acquire federal real property. However, the right to dispose of or acquire must come from either another section of the FRPA, or from another Act of Parliament.

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "administration"
- s. 5: grants of federal real property
- s. 16(1)(g): GIC authorization of transfers of administration
- s. 16(2)(g): regulations on transfers of administration
- s. 17(2): administration of reserved interests in fee simple grants
- s. 17(3): administration of reserved interests in non-fee simple grants
- s. 18(1): acquisitions and administration
- s. 18(2): Ministerial administration
- s. 18(3): continuity of administration
- s. 18(5): administration of departmental property

TBRP

- chap. 1-4: revenue

FRPRegs

- s. 6: transfer of administration or administrative responsibility

For greater certainty

18. (5) For greater certainty, a Minister may have the administration of federal real property for the purposes of any department of which that Minister is the Minister.

Notes

This subsection clarifies that a minister may administer federal real property for the purposes of any of the his or her departments.

This subsection makes it clear that a minister may administer federal real property for any department for which he or she is the appropriate minister, regardless of whether the department is

- a department named in Schedule I to the FAA, such as the Department of Transport;
- a division or branch of the Public Service named in Schedule I.1 to the FAA, such as the National Archives of Canada; or
- a departmental corporation, such as the National Research Council of Canada.

The subsection also clarifies that although a minister may be the appropriate minister for several departments, a particular piece of federal real property may only be under the administration of the minister for the purposes of one of those departments. This reiterates the purpose of subsection 18(1). The administration of a piece of federal real property for the purposes of one department would have to be transferred if it were to be used for the purposes of another department, regardless of whether the same minister were the appropriate minister for the two departments. This makes it clear that the managerial responsibility for the property rests with a minister for the purposes of a particular department.

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "administration"
- s. 2(1): definition of "department"
- s. 16(1)(g): GIC authorization of transfers of administration
- s. 16(2)(g): regulations on transfers of administration
- s. 17(2): administration of reserved interests in fee simple grants
- s. 17(3): administration of reserved interests in non-fee simple grants
- s. 18(1): acquisitions and administration
- s. 18(2): Ministerial administration
- s. 18(3): continuity of administration
- s. 18(4): consequences of administration

FRPRegs

- s. 6: transfer of administration or transfer of administrative responsibility

Administration by corporation

18. (6) Where, by or under any Act of Parliament or any order of the Governor in Council, a corporation has the right to the use of any federal real property the title to which is vested in Her Majesty, by the use of any expression mentioned in subsection (2) or any similar expression, and no Minister has the administration of the property, the corporation has, for the purposes of paragraphs 16(1)(g) and (h) and (2)(g), the administration of that property.

Notes

This subsection states that a corporation that, pursuant to a federal Act or an Order in Council, has the

- administration,
- administration and control,
- control, management and administration,
- management, charge and direction, or
- any similarly expressed power

over any federal real property, which is not administered by a minister, administers that property for the purposes of paragraphs 16(1)(j) and (l) and (2)(g) of this Act. Those paragraphs deal with transfers of administration and with grants of federal real property under the administration of a corporation.

The subsection makes it clear that the word "administration" did not have to be used in the federal Act or Order in Council.

The section applies to any real property that the corporation administers, the title of which is in Her Majesty's name, and that no minister administers.

Related General Questions

- 3.7.2. Did the coming into force of the FRPA affect the administration held by a Crown corporation?
- 3.7.3 Did this mean that a Crown corporation that had managed, charged and directed real property would suddenly lose its power to dispose of the property and retain the proceeds from the disposal because it would only have "administration" of the property?

Source

New.

Related Sections in the FRPA, FRPRegs and TBRP

FRPA

- s. 2(1): definition of "administration"
- s. 16(1)(g): GIC authorization of transfers of administration
- s. 16(1)(h): GIC authorization of grants of property administered by a corporation
- s. 16(2)(g): regulations on transfers of administration

FRPRegs

- s. 6: transfer of administration and transfer of administrative responsibility

**Defence lands
vested in Her
Majesty**

19. (1) Such of the real property mentioned in the schedule to the *Ordinance and Admiralty Lands Act*, chapter 115 of the Revised Statutes of Canada, 1927, as was on June 1, 1950 vested in Her Majesty, by whatever mode of conveyance it was acquired or taken and whether in fee, for life, for years or otherwise, and all the appurtenances thereof, unless disposed of since that date, continues absolutely vested in Her Majesty for the purposes of Canada in the same manner and to the same extent as on June 1, 1950.

**Alienation of
defence lands**

19. (2) Until the Governor in Council otherwise provides, federal real property that is declared by the Governor in Council to be necessary for the defence of Canada shall not be sold, alienated or otherwise disposed of, but the Governor in Council may authorize the lease or other use of such property as the Governor in Council thinks best for the advantage of Canada.

Deeming

(3) Lands that on June 1, 1950 were lands in class one under the *Ordinance and Admiralty Lands Act*, chapter 115 of the Revised Statutes of Canada, 1927, shall be deemed to have been declared by the Governor in Council to be necessary for the defence of Canada.

Notes

Subsection 19(1) states that the lands listed in the schedule to the *Ordinance and Admiralty Lands Act* as of June 1, 1950 continue to be federal Crown lands. This is essentially unchanged from previous legislation. However, it does clarify that the section only applies to real property which has not been disposed of by the government subsequent to June 1, 1950.

Section 19 was intended to ensure continuity of title for the lands mentioned in the *Ordinance and Admiralty Lands Act*. This continuity of title ensures that these lands, considered by the Governor in Council to be necessary for the defence of Canada, remain federal Crown property.

What was the *Ordinance and Admiralty Lands Act*? The Act set out restrictions on the disposal of public lands which were considered by the Governor in Council to be necessary to defend Canada. This Act was repealed in 1950.

What kind of lands are mentioned in the Schedule to the *Ordinance and Admiralty Lands Act*? Military reserves located in Ontario, Quebec, and in the Maritimes.

Why is the date of June 1, 1950 important in section 19? This was the date that the *Ordinance and Admiralty Lands Act* was repealed by the *Public Lands Grants Act, 1950*. The predecessor of section 19 first appeared in this 1950 revision of the *Public Lands Grants Act*.

Subsections 19(2) and (3) are essentially unchanged from the previous legislation. Subsection 19(2) prohibits disposing of federal real property declared by the Governor in Council to be "necessary for the defence of Canada." However, the subsection specifically allows the Governor in Council the option to lease or otherwise use the property as the Governor in Council "thinks best for the advantage of Canada." One difference from the previous legislation is that the subsection now explicitly provides that the Governor in Council may take real property out of this classification.

Subsection 19(3) states that class one lands under the *Ordinance and Admiralty Lands Act* on June 1, 1950 are deemed to be lands declared by the Governor in Council to be "necessary for the defence of Canada."

What kind of lands were class one lands under the *Ordinance and Admiralty Lands Act*? Class one lands under that Act were lands that had to be retained by the government to defend Canada.

Source

Subsection 19(1) is a modification of section 7 of the *Public Lands Grants Act*, which read:

" 7. *Such of the lands mentioned in the schedule to the Ordinance and Admiralty Lands Act, chapter 115 of the Revised Statutes of Canada, 1927, as on June 1, 1950 were vested in Her Majesty in right of Canada, by whatever mode of conveyance they were acquired or taken, whether in fee, for life, for years or otherwise, and all the appurtenances thereof, are and continue absolutely vested in Her Majesty for the purposes of Canada in the same manner and to the same extent as on June 1, 1950.*"

Subsections 19(2) and (3) are modifications of subsections 8(1) and 8(2), respectively, of the *Public Lands Grants Act*, which read:

" 8. (1) *Public Lands that are declared by the Governor in Council to be necessary for the defence of Canada shall not be sold, alienated or otherwise disposed of but may be leased or otherwise used as the Governor in Council thinks best for the advantage of Canada.*

(2) *Until the Governor in Council otherwise provides, lands that on June 1, 1950 were lands in class one under the Ordinance and Admiralty Lands Act are deemed to have been declared by the Governor in Council to be necessary for the defence of Canada.*"

**Grants to
deceased
persons not void**

20. A Crown grant that is issued to or in the name of a person who is deceased is not for that reason void, but the title to the real property intended to be granted vests in the heirs, assigns, devisees or other legal representatives of the deceased person according to the laws in force in the province in which the real property is situated as if the grant had issued to or in the name of the deceased person during the person's lifetime.

Notes

This section is essentially unchanged from the previous legislation. Under the section, a Crown grant is not void simply because it was issued to or in the name of a deceased person. The section ensures that the situation in this case is the same as if the grant had been made during the deceased person's lifetime. Title to the granted land automatically vests in the heirs or representatives of the deceased under the relevant provincial law.

Why is this section needed? Under common law, a real property conveyance is void if the grantee, i.e., the person receiving the property under the conveyance, died prior to the delivery of the conveyance. Section 20 abrogates this rule and allows the lands granted by a Crown grant to form part of the grantee's estate.

Source

Slight modification in the wording of section 9 of the *Public Lands Grants Act*, which read as follows:

" 9. A grant that is issued to or in the name of a person who is dead is not therefore void, but the title to the land thereby granted or intended to be granted vests in the heirs, assigns, devisees or other legal representatives of the deceased person according to the laws in force in the province in which the land is situated, as if the grant had issued to or in the name of the deceased person during that person's lifetime."

Correction of defective grants

21. Where a Crown grant contains a clerical error, misnomer or incorrect or defective description, or where there is in a Crown grant an omission of the conditions of the grant, or where a Crown grant is defective for any other reason, the Minister of Justice may, if there is no adverse claim, direct the defective grant to be cancelled and a correct grant to be issued in lieu thereof, and the correct grant so issued has the same force and effect as if issued on the date of the cancelled grant.

Notes

This section describes circumstances under which the Minister of Justice may correct defective Crown grants. Correctable errors under section 21 are:

- issuing the grant to, or in the name of, a wrong person;
- clerical errors or misnomers;
- wrong or defective description of the land intended to be granted;
- omission of the conditions of the grant; and
- defectiveness of the grant for any other reason.

Where these errors exist, the Minister of Justice may direct that the defective grant be cancelled and a corrected one issued. Such a direction can only be made if there is no adverse claim to the original grant or the lands granted. The corrected grant is deemed to have been issued as of the date of the original grant.

Why was the Minister of Justice given Governor in Council powers in the predecessor to section 21? Previously if letters patent were issued to the wrong person or contained a clerical error, a wrong or defective description, or if a condition which should have been in the letters patent was omitted, it was necessary to obtain Governor in Council approval to correct the grant. The authority to correct a defective grant under section 21 only exists if no adverse claim has been made. An undisputed correction of the grant could be authorized more expeditiously by the Minister of Justice than by the Governor in Council.

What will happen in cases of disputed corrections? In some cases the Governor in Council may rectify the problem through the procedures outlined in section 22 of the FRPA. In other cases, the dispute may become the subject of litigation.

Source

Modification of section 10 of the *Public Lands Grants Act*, which read:

" 10. Where a grant has issued to or in the name of a wrong person, or contains a clerical error, misnomer or wrong or defective description of the land thereby intended to be granted, or where there is in the grant an omission of the conditions of the grant, the Governor in Council may, if there is no adverse claim, direct the defective grant to be cancelled and a correct grant to be issued in lieu thereof, and the correct grant relates back to the date of the grant so cancelled and has the same force and effect as if issued at the date of the cancelled grant."

**Relief from
inconsistent
transactions**

22. (1) Where through error, inconsistent transactions relating to the same federal real property have been entered into, the Governor in Council may
- (a) order a new grant of federal real property, of such value as the Governor in Council considers just and equitable, to be made to any person deprived as a result of the error;
 - (b) make a new transfer of administration and control of federal real property, of such value as the Governor in Council considers just and equitable, to Her Majesty in any right other than Canada to provide relief from the error;
 - (c) in the case of a sale, lease or licence, order a refund to be made of any money paid on account of the sale, lease or licence, with interest at a rate established in the manner prescribed by the Governor in Council; or
 - (d) where the property has passed from the original holder or has been improved before the discovery of the error, or where an original Crown grant was a free grant, order a new grant of such federal real property as the Governor in Council considers just and equitable under the circumstances to be made to the original holder.

Idem

- (2) No claim shall be made for relief under subsection (1) later than one year after the day on which the person making the claim becomes aware of the error.

Notes

This section continues the previous legislation with some slight modifications.

Section 22 describes the options available to the Governor in Council when two or more inconsistent Crown grants, sales, or appropriations are erroneously made for the same land.

These options include:

- making another grant of real property to the person whose original grant is invalid;
- making a new transfer of administration and control;
- refunding the purchase money with interest in the case of a sale, lease, or licence; or
- granting such other real property as the Governor in Council considers equitable to the original grantee where:
 - the original grantee no longer owns the property originally granted;
 - the originally granted property was improved before the error was discovered; or
 - the original grant was a "free" Crown grant.

A claim for relief under this section must be made within the limitation period of one year after the error is discovered.

Source

Modification of subsections 11(1) and (2) of the *Public Lands Grants Act*, which read:

" 11. (1) Where through error grants have issued for the same land, inconsistent with each other, or where sales or appropriations of the same land, inconsistent with each other, have been made, the Governor in Council may

(a) order a new grant to the person thereby deprived, of land to a value equal to that of the original grant at the time of the grant;

(b) in the case of a sale, lease or licence, order a refund to be made of any money paid on account of the sale, lease or licence, with interest at the rate of five per cent per annum; or

(c) when the land has passed from the original holder, or has been improved before the discovery of the error, or when the original grant was a free grant, grant to the original holder such land as to the Governor in Council seems just and equitable under the circumstances.

(2) No claim under subsection (1) shall be entertained unless it is made within one year after the discovery of the error."

Consequential Amendments

Notes

These sections contain the specific amendments to previous legislation necessary to give effect to the provisions of this Act. The Acts amended were:

- *Canada-Newfoundland Atlantic Accord Implementation Act*
 - amendments of sections 167 and 172;
- *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*
 - amendments of sections 172 and 177;
- *Financial Administration Act*
- amendment of sections 61 and 99;
- *Government Property Traffic Act*
 - amendment of section 4;
- *Department of Indian Affairs and Northern Development Act*
 - amendment of section 6;
- *Land Titles Act*
 - amendment of section 55;
- *Municipal Grants Act*
- amendment of section 2;
- *Northern Inland Waters Act*
 - amendment of section 30;
- *Northern Pipeline Act*
 - amendment of section 37;
- *Oil and Gas Production and Conservation Act*
 - amendment of sections 30 and 37;
- *Public Works Act*
 - amendment of sections 9 and 18, repeal of sections 36 and 39.1;
- *Surplus Crown Assets Act*
 - insertion of new section 2.1, amendment of sections 3 and 19;
- *Territorial Lands Act*
 - amendment of section 3;
- *Department of Transport Act*
 - amendment of section 12;
- *Canada Wildlife Act*
 - amendment of sections 4 and 12; and
- *Yukon Placer Mining Act*
 - amendment of section 17.

Please note that these provisions may have been subsequently repealed or amended further.

*Canada-Newfoundland Atlantic Accord
Implementation Act*

23. Subsection 167(2) of the *Canada-Newfoundland Atlantic Accord Implementation Act* is repealed and the following substituted therefor:

**Pooling
agreement by
Her Majesty**

"(2) The Board may, on behalf of Her Majesty, enter into a pooling agreement on such terms and conditions as it deems advisable and, notwithstanding anything in Part II or this Part, the *Federal Real Property Act* or any regulations made under those Parts or that Act, the pooling agreement is binding on Her Majesty."

24. Subsection 172(2) of the said Act is repealed and the following substituted therefor:

**Minister may
enter into unit
agreement**

"(2) The Board may enter into a unit agreement binding on Her Majesty, on such terms and conditions as it may deem advisable, and such of the regulations under Part II or this Part or the *Federal Real Property Act* as may be in conflict with the terms and conditions of the unit agreement stand varied or suspended to the extent necessary to give full effect to the terms and conditions of the unit agreement."

Notes

This section replaced the references to the *Public Lands Grants Act* in subsection 167(2) and subsection 172(2) with references to the FRPA. This ensured continuity in the subsection when the *Public Lands Grants Act* was repealed by section 50 of this Act.

What is the *Canada-Newfoundland Atlantic Accord Implementation Act*? This Act implements the Atlantic Accord of February 11, 1985 between the federal government and the Province of Newfoundland regarding managing offshore oil and gas resources and sharing revenue.

Source

Subsection 167(2) of the *Canada-Newfoundland Atlantic Accord Implementation Act* read as follows:

*Pooling
agreement by
Her Majesty*

"(2) The Board may, on behalf of Her Majesty, enter into a pooling agreement on such terms and conditions as it deems advisable and, notwithstanding anything in Part II or this Part, the Public Lands Grants Act or any regulations made under those Parts or that Act, the pooling agreement is binding on Her Majesty. "

Subsection 172(2) of the *Canada-Newfoundland Atlantic Accord Implementation Act* read as follows:

*Minister may
enter into unit
agreement*

"(2) The Board may enter into a unit agreement binding on Her Majesty, on such terms and conditions as it may deem advisable, and such of the regulations under Part II or this Part or the Public Lands Grants Act as may be in conflict with the terms and conditions of the unit agreement stand varied or suspended to the extent necessary to give full effect to the terms and conditions of the unit agreement. "

1988, c. 28

*Canada-Nova Scotia Offshore Petroleum
Resources Accord Implementation Act*

25. Subsection 172(2) of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* is repealed and the following substituted therefor:

**Pooling
agreement by
Her Majesty**

"(2) The Board may, on behalf of Her Majesty, enter into a pooling agreement on such terms and conditions as it deems advisable and, notwithstanding anything in Part II or this Part, the *Federal Real Property Act* or any regulations made under those Parts or that Act, the pooling agreement is binding on Her Majesty."

26. Subsection 177(2) of the said Act is repealed and the following substituted therefor:

**Board may
enter into unit
agreement**

"(2) The Board may enter into a unit agreement binding on Her Majesty, on such terms and conditions as it may deem advisable, and such of the regulations under Part II or this Part or the *Federal Real Property Act* as may be in conflict with the terms and conditions of the unit agreement stand varied or suspended to the extent necessary to give full effect to the terms and conditions of the unit agreement."

Notes

This section replaced references to the *Public Lands Grants Act* in subsections 172(2) and 177(2) with references to the FRPA. This ensured continuity in the subsection when the *Public Lands Grants Act* was repealed by section 50 of this Act.

What is the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*? This Act implements the August 26, 1985 agreement between the federal government and the Province of Nova Scotia regarding managing offshore oil and gas resources and sharing revenue.

Source

Subsection 172(2) of the *Canada-Nova Scotia Petroleum Resources Accord Implementation Act* read as follows:

*Pooling
agreement by
Her Majesty*

"(2) The Board may, on behalf of Her Majesty, enter into a pooling agreement on such terms and conditions as it deems advisable and, notwithstanding anything in Part II or this Part, the Public Lands Grants Act or any regulations made under those Parts or that Act, the pooling agreement is binding on Her Majesty."

Subsection 177(2) of the *Canada-Nova Scotia Petroleum Resources Accord Implementation Act* read as follows:

*Minister may
enter into unit
agreement*

"(2) The Board may enter into a unit agreement binding on Her Majesty, on such terms and conditions as it may deem advisable, and such of the regulations under Part II or this Part or the Public Lands Grants Act as may be in conflict with the terms and conditions of the unit agreement stand varied or suspended to the extent necessary to give full effect to the terms and conditions of the unit agreement."

R.S., c. F-11

Financial Administration Act

27. Section 61 of the *Financial Administration Act* is repealed and the following substituted therefor:

**Transfers, etc.
of public property**

"61. (1) Subject to any other Act of Parliament, no transfer, lease, or loan of public property shall be made except pursuant to the *Federal Real Property Act* in the case of federal real property as defined in that Act, or pursuant to subsection (2) in the case of other public property.

Regulations

(2) The Governor in Council, on the recommendation of the Treasury Board, may authorize or make regulations authorizing the transfer, lease or loan of public property other than federal real property as defined in the *Federal Real Property Act*."

Notes

This section amended section 61 of the FAA to clarify that that section does not apply to dispositions of federal real property. The FRPA was intended to be the primary general means by which dispositions of real property by the government are regulated.

Source

Modification of section 61 of the FAA, which read:

**PART V
PUBLIC PROPERTY**

61. Subject to any other Act of Parliament, no transfer, lease or loan of public property shall be made to any person except on the direction of the Governor in Council or in accordance with regulations of the Governor in Council made on the recommendation of the Treasury Board."

28. Subsection 99(6) of the said Act is repealed and the following substituted therefor:

**Provision and
Acts not
applicable**

"(6) Section 61 of this Act, the *Surplus Crown Assets Act* and the *Federal Real Property Act*, except paragraphs 16(1)(g) and (h) and (2)(g) and subsection 18(6) thereof, do not apply to an agent corporation."

Notes

This section amended subsection 99(6) of the FAA by

- deleting a reference to the *Public Lands Grants Act*, which was repealed by section 50 of the FRPA; and
- including a reference to the FRPA.

It should be noted that unlike the *Public Lands Grants Act*, the FRPA is intended, in certain specific sections, to apply to agent Crown corporations. These sections, paragraphs 16(1)(j) and (l) and (2)(g), allow for transfers of administration between ministers and agent corporations and for grants of federal real property to the corporations administering the properties.

Why did section 99 of the FAA need to be amended? Section 99 of the FAA sets out the regime governing property held by agent corporations. Subsection 99(6) prevents certain statutory provisions dealing with real property from applying to agent corporations. This is done because these provisions would conflict with the regime set out in section 99. The reference in subsection 99(6) to the *Public Lands Grants Act* was deleted because that Act was repealed by the FRPA. Subsection 99(6) was further amended to ensure that the FRPA does not affect agent corporations except to the extent necessary to give effect to

- paragraph 16(1)(g) – GIC authority for transfers of administration between ministers and agent corporations,
- paragraph 16(1)(h) – GIC authority for grants of federal real property to the corporation administering the property,
- paragraph 16(2)(g) – Regulations on transfers of administration between ministers and agent corporations, and
- subsection 18(6) – Description of when an agent corporation administers real property for the purposes of the FRPA.

Thus, it is possible to transfer the administration of real property between ministers and agent corporations and to grant federal real property to Crown corporations. The FRPA does not affect the powers of Crown corporations to dispose of property.

Why weren't the powers of agent corporations to dispose of property affected by the FRPA? The FRPA is meant to be a primary general authority for government departments in conveyancing real property and is not intended to supersede the specific authorities provided to agent corporations under the corporations' own Acts or the FAA.

Source

Modification of subsection 99(6) of the FAA, which read:

"(6) The Public Lands Grants Act, the Surplus Crown Assets Act and section 61 of this Act do not apply to an agent corporation."

R.S., c. G-6

Government Property Traffic Act

29. Paragraph 4(b) of the *Government Property Traffic Act* is repealed and the following substituted therefor:

"(b) the minister having the administration of the lands or the deputy, assistant deputy or acting deputy of that minister, or"

Notes

This section amended paragraph 4(b) of the *Government Property Traffic Act* by substituting the word "administration" for the words "management, charge and direction."

What is the *Government Property Traffic Act*? This Act regulates vehicular traffic on federal real property by empowering the Governor in Council to make regulations concerning traffic rules and enforcement.

Source

Modification of paragraph 4(b) of the *Government Property Traffic Act*, which read:

" 4. In any prosecution for a contravention of a regulation, a certificate stating that Her Majesty in right of Canada is the owner or occupant of the lands described therein and purporting to be signed by ...

(b) the minister of the department having the management, charge and direction of the lands or the deputy, assistant deputy or acting deputy of the minister of that department, or ..."

R.S., c. I-6

***Department of Indian Affairs and
Northern Development Act***

30. Section 6 of the *Department of Indian Affairs and Northern Development Act* is repealed and the following substituted therefor:

Administration

" 6. The Minister has the administration of all lands situated in the Yukon Territory and the Northwest Territories belonging to Her Majesty in right of Canada except lands that were immediately before October 1, 1966 under the management, charge and direction of any minister, department, branch or agency of the Government of Canada other than the Minister of Northern Affairs and National Resources or the Department of Northern Affairs and National Resources."

Notes

This section amended section 6 of the *Department of Indian Affairs and Northern Development Act* by substituting the word "administration" for the words "management, charge and direction."

What is the *Department of Indian Affairs and Northern Development Act*? This Act establishes the Department of Indian Affairs and Northern Development and lists the powers and responsibilities of the Minister of that department.

Source

Modification of section 6 of the *Department of Indian Affairs and Northern Development Act*, which read:

" 6. The Minister has the management, charge and direction of all lands situated in the Yukon Territory and the Northwest Territories belonging to Her Majesty in right of Canada except lands that were immediately before October 1, 1966 under the management, charge and direction of any minister, department, branch or agency of the Government of Canada other than the Minister of Northern Affairs and National Resources or the Department of Northern Affairs and National Resources."

R.S., c. L-5

Land Titles Act

31. (1) The definition "territorial lands" in subsection 55(1) of the *Land Titles Act* is repealed and the following substituted therefor:

"territorial lands"

«terres ...»

"territorial lands" means territorial lands as defined in section 2 of the *Territorial Lands Act* that are lands for which a grant in fee simple or by letters patent, a certificate of title or a notification has not been issued;"

(2) Subsection 55(2) of the said Act is repealed and the following substituted therefor:

Issue of
certificates to
Her Majesty

"(2) A Minister who has the administration of territorial lands may apply to have a certificate of title for those lands issued under this Act in the name of Her Majesty in right of Canada."

Notes

Subsection 31(1) amended the definition of "territorial lands" in subsection 55(1) of the *Land Titles Act* to reflect the new types of Crown grants created by the FRPA.

Subsection 31(2) amended subsection 55(2) of the *Land Titles Act* by substituting the word "administration" for the words "administration, management and control." The wording of the subsection was also changed to reflect preferred legislative drafting practice.

This Act established and regulated a federal land registration system. It was repealed in respect of the Northwest Territories and the Yukon Territory on July 19, 1993.

Source

Modification of the definition of "territorial lands" in subsection 55(1) of the *Land Titles Act* and subsection 55(2) of that Act, which read:

" "territorial lands" means territorial lands as defined in section 2 of the *Territorial Lands Act* that are lands for which letters patent, a certificate of title or a notification has not been issued;"

"(2) Where a Minister has the administration, management or control of territorial lands, he may apply to have a certificate of title for those lands issued under this Act in the name of Her Majesty in right of Canada."

R.S., c. M-13

Municipal Grants Act

32. (1) The definition "federal property" in subsection 2(1) of the *Municipal Grants Act* is repealed and the following substituted therefor:

"federal
property"
«immeuble...»

" "federal property" means, subject to subsection (3),

(a) real property owned by Her Majesty in right of Canada that is under the administration of a minister of the Crown,

(b) real property owned by Her Majesty in right of Canada that is, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation,

(c) real property subject to an emphyteutic lease to Her Majesty in right of Canada that is under the administration of a minister of the Crown,

(d) a building owned by Her Majesty in right of Canada that is under the administration of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a province, and

(e) such real property occupied or used by a minister of the Crown and administered and controlled by Her Majesty in right of a province as is prescribed;"

(2) Subparagraph 2(3)(c)(ii) of the said Act is repealed and the following substituted therefor:

"(ii) that is occupied by or is under the administration of a minister of the Crown primarily for purposes of providing services to persons not resident on that reserve,"

Notes

Subsection 32(1) amended the definition of "federal property" in subsection 2(1) of the *Municipal Grants Act* by substituting the word "administration" for the words "management, charge and direction" when used in the context of a minister administering federal real property.

Subsection 32(2) amended subparagraph 2(3)(c)(ii) of the *Municipal Grants Act* by substituting the word "administration" for the words "management, charge and direction."

What is the *Municipal Grants Act*? This Act authorizes and regulates grants in lieu of taxes from the federal government to municipalities and provinces levying real property taxes.

Source

Modification of definition of "federal property" in subsection 2(1) of the *Municipal Grants Act*, which read:

"*federal property*" means, subject to subsection (3),

(a) real property owned by Her Majesty in right of Canada that is under the management, charge and direction of a minister of the Crown,

(b) real property owned by Her Majesty in right of Canada that is, by virtue of a lease to a corporation included in Schedule III or IV, under the management, charge and direction of that corporation,

(c) real property subject to an emphyteutic lease to Her Majesty in right of Canada that is under the management, charge and direction of a minister of the Crown,

(d) a building owned by Her Majesty in right of Canada that is under the management, charge and direction of a minister of the Crown and that is situated on tax exempt land owned by a person other than Her Majesty in right of Canada or administered and controlled by Her Majesty in right of a province, and

(e) such real property occupied or used by a minister of the Crown and administered and controlled by Her Majesty in right of a province as is prescribed;"

Modification of subparagraph 2(3)(c)(ii) of the *Municipal Grants Act*, which read:

"(ii) that is occupied by or is under the management, charge and direction of a minister of the Crown primarily for purposes of providing services to persons not resident on that reserve,"

Northern Inland Waters Act

33. All that portion of subsection 30(1) of the *Northern Inland Waters Act* preceding paragraph (a) thereof is repealed and the following substituted therefor:

**Reservation of
lands from
disposition**

"30. (1) The Governor in Council may, by order, reserve from disposition under any enactment relating to the disposition of territorial lands, either for a specified period or otherwise, all or any interests in any territorial lands under the administration of the Minister where the interests are in the opinion of the Governor in Council required"

Notes

Section 33 amended that portion of subsection 30(1) of the *Northern Inland Waters Act* preceding paragraph (a) by substituting the word "administration" for the words "management, charge and direction".

What is the *Northern Inland Waters Act*? This Act establishes the regime for managing the rivers, lakes and other inland waters of the Yukon Territory and the Northwest Territories.

Source

Modification of subsection 30(1) of the *Northern Inland Waters Act*, which read:

"30. (1) The Governor in Council may, by order, reserve from disposition under any enactment relating to the disposition of territorial lands, either for a specified period or otherwise, all or any interests in any territorial lands under the management, charge and direction of the Minister where the interests are in the opinion of the Governor in Council required

(a) for the protection of any water resource; or

(b) in connection with any undertaking the development or operation of which is, in his opinion, in the public interest and that would require the use of those interests in lands and of waters adjacent to the lands."

R.S., c. N-26

Northern Pipeline Act

34. Subsection 37(1) of the *Northern Pipeline Act* is repealed and the following substituted therefor:

Commissioner's
lands

"37. (1) Where the right to the beneficial use or the proceeds of lands in the Yukon Territory vested in Her Majesty in right of Canada is appropriated to the Commissioner of that Territory and the Governor in Council is of the opinion that those lands are required temporarily or otherwise for the construction, maintenance or operation of the pipeline including, without limiting the generality of the foregoing, lands required for camps, roads and other related works, the Governor in Council may, after consultation with the Commissioner in Council, by order, transfer the administration of those lands to the Minister."

Notes

Section 34 amended subsection 37(1) of the *Northern Pipeline Act* by

- substituting the word "administration" for the words "administration, management or control"; and
- replacing the word "he" with the words "the Governor in Council."

What is the *Northern Pipeline Act*? This Act establishes the Northern Pipeline Agency and implements the 1977 agreement between Canada and the United States concerning the running of a portion of the Alaskan natural gas pipeline across Canadian territory.

Source

Modification of subsection 37(1) of the *Northern Pipeline Act*, which read:

"37. (1) Where the right to the beneficial use or the proceeds of lands in the Yukon Territory vested in Her Majesty in right of Canada is appropriated to the Commissioner of that Territory and the Governor in Council is of the opinion that those lands are required temporarily or otherwise for the construction, maintenance or operation of the pipeline including, without limiting the generality of the foregoing, lands required for camps, roads and other related works, he may, after consultation with the Commissioner in Council, by order, transfer the administration, management or control of those lands to the Minister."

R.S., c. O-7

Oil and Gas Production and Conservation Act

R.S., c. 36 (2nd Supp.), s. 124

35. Subsection 30(2) of the *Oil and Gas Production and Conservation Act* is repealed and the following substituted therefor:

Pooling
agreement by
Her Majesty

"(2) The Minister may, on behalf of Her Majesty, enter into a pooling agreement on such terms and conditions as the Minister deems advisable and, notwithstanding anything in this Act, the *Territorial Lands Act*, the *Federal Real Property Act*, the *Canadian Petroleum Resources Act* or any regulations made under those Acts, the pooling agreement is binding on Her Majesty."

R.S., c. 36 (2nd Supp.), s. 125

36. Subsection 37(2) of the said Act is repealed and the following substituted therefor:

Minister may
enter into unit
agreement

"(2) The Minister may enter into a unit agreement binding on Her Majesty, on such terms and conditions as the Minister may deem advisable, and such of the regulations under this Act, the *Territorial Lands Act*, the *Federal Real Property Act*, the *Canada Petroleum Resources Act* as may be in conflict with the terms and conditions of the unit agreement stand varied or suspended to the extent necessary to give full effect to the terms and conditions of the unit agreement."

Notes

This section replaced the references to the *Public Lands Grants Act* in subsections 30(2) and 37(2) with references to the FRPA. This ensured continuity in the subsection when the *Public Lands Grants Act* was repealed by section 50 of the FRPA.

What is the *Oil and Gas Production and Conservation Act*? This Act applies to oil and gas exploration and development in the Yukon and Northwest Territories and in the offshore. It, along with the *Canada Petroleum Resources Act* and the Acts implementing the Newfoundland and Nova Scotia Accords, forms the legal framework for managing the oil and gas resources in these parts of Canada.

Source

Subsection 30(2) of the *Oil and Gas Production and Conservation Act* read as follows:

*Pooling
agreement by
Her Majesty*

"(2) The Minister may, on behalf of Her Majesty, enter into a pooling agreement on such terms and conditions as the Minister deems advisable and, notwithstanding anything in this Act, the Territorial Lands Act, the Public Lands Grants Act, the Canadian Petroleum Resources Act or any regulations made under those Acts, the pooling agreement is binding on Her Majesty."

Subsection 37(2) of the *Oil and Gas Production and Conservation Act* read as follows:

*Minister may
enter into unit
agreement*

"(2) The Minister may enter into a unit agreement binding on Her Majesty, on such terms and conditions as the Minister may deem advisable, and such of the regulations under this Act, the Territorial Lands Act, the Public Lands Grants Act, the Canada Petroleum Resources Act as may be in conflict with the terms and conditions of the unit agreement stand varied or suspended to the extent necessary to give full effect to the terms and conditions of the unit agreement."

R.S., c. P-38

Public Works Act

37. Subsection 9(2) of the *Public Works Act* is repealed and the following substituted therefor:

Crown lands

"(2) The Minister has the administration of all lands belonging to Her Majesty in right of Canada except lands specially under the administration of any other minister, department, board or agency of the Government of Canada."

Notes

Section 37 amended subsection 9(2) of the *Public Works Act* by substituting the word "administration" for the words "management, charge and direction."

Source

Modification of subsection 9(2) of the *Public Works Act*, which read:

"(2) The Minister has the management, charge and direction of all lands belonging to Her Majesty in right of Canada except lands specially under the management, charge and direction of any other minister, department, board or agency of the Government of Canada."

38. Section 18 of the said Act is renumbered as subsection 18(1) and is further amended by adding thereto the following subsection:

**Real
property
excluded**

"(2) Subsection (1) does not apply in respect of any instrument the execution of which is provided for by or under the *Federal Real Property Act*."

Notes

Section 38 amended section 18 of the *Public Works Act* by excluding instruments under the FRPA from the signing requirements of section 18.

Source

Modification of section 18 of the *Public Works Act*, which read:

"18. No deed, contract, document or writing relating to any matter under the control or direction of the Minister shall be binding on Her Majesty or be deemed to be the act of the Minister, unless

(a) it is signed by the Minister;

(b) it is signed by the Deputy Minister and countersigned by the Secretary or a person authorized in writing by the Minister to countersign on behalf of the Secretary; or

(c) it is signed by a person authorized in writing by the Minister to sign on the Minister's behalf and countersigned by the Secretary or a person authorized in writing by the Minister to countersign on behalf of the Secretary."

39. Section 36 of the said Act is repealed.

R.S., c. 13 (1st Supp.), s. 2

40. Section 39.1 of the said Act is repealed.

Notes

These sections repealed sections 36 and 39.1 of the *Public Works Act*.

Section 36 of the *Public Works Act* provided for transfers of management, charge and direction between ministers. It was unnecessary because the provisions dealing with transfers of administration were incorporated into the FRPA.

Section 39.1 of the *Public Works Act* was added to that Act in 1985 to provide further authority for the Crown to enter into lease purchase transactions. This section was no longer required as section 16 of the FRPA now provides a residual authority for all dispositions of federal Crown lands, including lease purchase transactions.

Source

Section 36 of the *Public Works Act* read as follows:

"36. (1) *The Governor in Council may transfer the management, charge and direction of any public work, or any power, duty or function with respect to any work or class of works, whether public or private, that is assigned to or vested by statute in any minister or department, to any other minister or department, and from the date appointed for that purpose by the Governor in Council, that power, duty or function shall be transferred to and vested in that other minister or department, and the provisions of this Act, in so far as they are applicable, apply to any work or property the maintenance, repair, control or management of which is transferred under this section.*

(2) *Any transfer referred to in subsection (1) may be made although the subject-matter thereof has previously been transferred from one department to another under the authority of this section."*

Section 39.1 of the *Public Works Act* read as follows:

"39.1 *Notwithstanding anything in this Act or in any other Act, a public work may be leased or otherwise disposed of for a term, under the authority of the Governor in Council, if Her Majesty obtains the right to occupy the whole or part of the public work for the term or a part thereof, and the proceeds of such a lease or other disposition shall be accounted for as public moneys."*

R.S., c. S-27

Surplus Crown Assets Act

41. The heading preceding section 2 of the *Surplus Crown Assets Act* is repealed and the following substituted therefor:

" INTERPRETATION AND APPLICATION "

Notes

This section amended the heading to section 2 from "Interpretation" to "Interpretation and Application." This amendment was made because section 42 of the FRPA added a new section [2.1] to the *Surplus Crown Assets Act* that restricted the application of the Act to all property other than real property.

Source

Modification of the heading preceding section 2 of the *Surplus Crown Assets Act*, which read:

"INTERPRETATION"

42. The said Act is further amended by adding thereto, immediately after section 2 thereof, the following section:

Application

"2.1 This Act does not apply in respect of real property as defined in the *Federal Real Property Act* or licences in respect thereof."

Notes

The *Surplus Crown Assets Act* was amended to apply only to personal property. Section 42 excludes federal real property as defined under the FRPA from the operation of the *Surplus Crown Assets Act*.

Why is it useful to have the disposal of real property and personal property in two different Acts? There are substantial differences between disposing of real property and disposing of personal property. For example, whereas dispositions of personal property are generally final dispositions of all of the Crown's interest in the personal property, conveyances of real property can involve disposing of many varied interests of the Crown in the property. In addition, the law of personal property differs in many respects from that of real property. The division of the disposal of surplus Government property into the FRPA for real property and the *Surplus Crown Assets Act* for personal property recognized the differences between these types of property and the processes used in their dispositions.

Related General Questions

3.1.6 Did the FRPA change the procedures for the disposal of surplus lands?

Source

New.

1989, c. 27, s. 24

43. Subsection 3(2) of the said Act is amended by adding the word "and" at the end of paragraph (a) thereof and by repealing paragraphs (c) to (f) thereof.

Notes

Section 43 repealed those paragraphs of subsection 3(2) of the *Surplus Crown Assets Act* that referred to real property assets of government departments.

Source

Subsection 3(2) of the *Surplus Crown Assets Act* read as follows:

- "(2) The following property need not be included in a report made under subsection (1), except to such extent as may be specified by order of the Governor in Council:*
- (a) agricultural or dairy products or livestock or livestock products, other than those in the custody or under the control or administration of the Department of National Defence;*
 - (b) personal property acquired or produced by a board, commission, corporation or other body for disposal pursuant to an Act of Parliament or order of the Governor in Council;*
 - (c) lands situated in the Yukon Territory or the Northwest Territories and under the control, management or administration of the Minister of Indian Affairs and Northern Development;*
 - (d) lands under the control, management or administration of the Minister of Mines and Resources on December 31, 1949, or under the control, management or administration of a Minister by virtue of the Indian Act, the National Parks Act or the Forestry Development and Research Act;*
 - (e) lands under the control, management or administration of the Minister of Transport, other than those acquired pursuant to the Acts mentioned in section 2 of the War Appropriation Act, No. 2, 1944;*
 - (f) lands authorized to be disposed of under the Veterans' Land Act, chapter V-4 of the Revised Statutes of Canada, 1970, the Soldier Settlement Act, the Canada Mortgage and Housing Corporation Act or the Housing Acts as defined in the Canada Mortgage and Housing Corporation Act, chapter C-16 of the Revised Statutes of Canada, 1970."*

R.S., c. 22 (1st Supp.), s. 8

44. Section 19 of the said Act is repealed and the following substituted therefor:

"19. The Minister or any person generally or specifically so authorized by the Minister may execute, on behalf of Her Majesty, any bill of sale, contract or other document transferring the ownership of, or otherwise dealing with or relating to the disposition of, surplus Crown assets and when any such document has been so executed it is valid and binding on Her Majesty."

Notes

Section 19 of the *Surplus Crown Assets Act* describes the execution of documents disposing of surplus property. Section 44 of the FRPA amended section 19 by limiting the documents to those by which personal property is transferred.

Source

Section 19 of the *Surplus Crown Assets Act* read as follows:

"19. Either the Minister or any person or persons thereunto generally or specifically authorized by the Minister or the Corporation under its corporate seal and the hands of its duly authorized officers may execute, on behalf of Her Majesty, any deed, contract or document transferring title to, or otherwise dealing with or relating to the disposition of, surplus Crown assets, other than a grant of land, and when any such document has been so executed it is valid and binding on Her Majesty."

R.S., c. T-7

Territorial Lands Act

45. Subsection 3(1) of the *Territorial Lands Act* is repealed and the following substituted therefor:

Application

"3. (1) Subject to subsection (2), this Act applies only in respect of territorial lands under the administration of the Minister."

Notes

This section amended subsection 3(1) of the *Territorial Lands Act* by substituting the word "administration" for the words "control, management and administration."

Source

Modification of subsection 3(1) of the *Territorial Lands Act*, which read as follows:

"3. (1) Subject to subsection (2), this Act applies only to territorial lands that are under the control, management and administration of the Minister."

R.S., c. T-18

Department of Transport Act

46. Section 12 of the *Department of Transport Act* is amended by adding thereto the following subsection:

Real
property
excluded

"(3) This section does not apply in respect of any instrument the execution of which is provided for by or under the *Federal Real Property Act*."

Notes

Section 46 amended section 12 of the *Department of Transport Act* by excluding instruments under the FRPA from the signing requirements of section 12.

What is the *Department of Transport Act*? This Act establishes the Department of Transport and lists the powers and responsibilities of the Minister of that department.

Source

Modification of section 12 of the *Department of Transport Act*, which read:

"12. (1) No deed, contract, document or writing relating to any matter under the control or direction of the Minister shall be binding on Her Majesty unless

(a) it is signed by the Minister;

(b) it is signed by the Deputy Minister and countersigned by the Secretary; or

(c) it is signed by a person specially authorized in writing by the Minister for that purpose.

(2) The authorization given by the Minister under paragraph (1)(c) to a person professing to act for the Minister shall not be called in question except by the Minister or by a person acting for the Minister or for Her Majesty."

Canada Wildlife Act

47. (1) Subsection 4(1) of the *Canada Wildlife Act* is repealed and the following substituted therefor:

**Assignment of
public lands**

"4. (1) Where the Governor in Council is satisfied that any public lands are required for wildlife research, conservation or interpretation, the Governor in Council may assign the administration of those lands to the Minister."

(2) All that portion of subsection 4(2) of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

**Powers of
Minister on
public lands
assigned**

"(2) Where the administration of any public lands has been assigned to the Minister pursuant to subsection (1), the Minister may"

Notes

Section 47 amended subsections 4(1) and (2) of the *Canada Wildlife Act* by substituting the word "administration" for the words "administration, management and control."

What is the *Canada Wildlife Act*? This Act is concerned with wildlife research, conservation and interpretation.

Source

Subsection 4(1) of the *Canada Wildlife Act* read as follows:

"4. (1) Where the Governor in Council is satisfied that any public lands are required for wildlife research, conservation or interpretation, the Governor in Council may assign the administration, management and control of those lands to the Minister."

The relevant part of subsection 4(2) of the *Canada Wildlife Act* read as follows:

"(2) Where the administration, management and control of any public lands has been assigned to the Minister pursuant to subsection (1), the Minister may"

48. (1) Paragraph 12(a) of the said Act is repealed and the following substituted therefor:

"(a) prohibiting entry, generally or for any specified period or purpose, of any person on lands under the administration of the Minister or on any part of those lands;"

(2) Paragraphs 12(h) and (i) of the said Act are repealed and the following substituted therefor:

"(h) prescribing measures for the conservation of wildlife on public lands the administration of which has been assigned to the Minister pursuant to subsection 4(1); and

(i) respecting the establishment of facilities or the construction, maintenance and operation of works for wildlife research, conservation and interpretation on public lands the administration of which has been assigned to the Minister pursuant to subsection 4(1)."

Notes

Section 48 amended paragraphs 12(a), (h), and (i) of the *Canada Wildlife Act* by substituting the word "administration" for the words "administration, management and control."

Source

Paragraph 12(a) of the *Canada Wildlife Act* read as follows:

"12. The Governor in Council may make regulations

(a) prohibiting entry, generally or for any specified period of purpose, of any person on lands under the administration, management and control of the Minister or on any part of those lands;"

Paragraph 12(h) of the *Canada Wildlife Act* read as follows:

"(h) prescribing measures for the conservation of wildlife on public lands the administration, management and control of which has been assigned to the Minister pursuant to subsection 4(1); and

Paragraph 12(i) of the *Canada Wildlife Act* read as follows:

"(i) respecting the establishment of facilities or the construction, maintenance and operation of works for wildlife research, conservation and interpretation on public lands the administration, management and control of which has been assigned to the Minister pursuant to subsection 4(1)."

R.S., c. Y-3

Yukon Placer Mining Act

49. Paragraph 17(2)(f) of the *Yukon Placer Mining Act* is repealed and the following substituted therefor:

"(f) under the administration of the Minister of National Defence, unless the consent of that Minister has been obtained in writing;"

Notes

Section 49 amended paragraph 17(2)(f) of the *Yukon Placer Mining Act* by substituting the word "administration" for the words "administration and control."

What does the *Yukon Placer Mining Act* do? The Act regulates the "placer" mining of gold in the Yukon Territory. Placer mining is essentially surface mining and is typically done by sifting through dirt or gravel by panning or through the use of water hoses. The sub-surface mining of gold or other precious minerals is covered in the *Yukon Quartz Mining Act*.

Source

Paragraph 17(2)(f) of the *Yukon Placer Mining Act* read as follows:

"(f) under the administration and control of the Minister of National Defence, unless the consent of that Minister has been obtained in writing;"

Repeal

**Repeal of R.S,
c. P-30**

50. The *Public Lands Grants Act* is repealed.

Notes

This section repealed the *Public Lands Grants Act*.

Why did the *Public Lands Grants Act* need to be repealed? The *Public Lands Grants Act* was initially enacted in the late 1800s. As its provisions had remained essentially the same to the 1990s, the Act was not very well suited for modern conveyancing practices. The FRPA has taken the provisions contained in the *Public Lands Grants Act* and put them in the context of modern government and real property practices. Because the *Public Lands Grants Act* dealt primarily with only the disposing of Crown lands, the government felt that a new Act was needed to consolidate all the generic real property authorities and responsibilities relating to federal real property in one statute.

Were the regulations under the *Public Lands Grants Act* affected by the repeal of that Act? They were affected only to the extent that they were inconsistent with the provisions of the FRPA. The regulations under the *Public Lands Grants Act* remain in force and are deemed to have been made under the FRPA until such time as the old regulations are repealed or new regulations are made in their place. Paragraph 44(g) of the *Interpretation Act* ensures this continuity in all cases where a statute is repealed and a new Act enacted in its place. This paragraph provides that all regulations made under a repealed Act remain in force and are deemed to have been made under the new Act, in so far as they are not inconsistent with the new Act, until the regulations are repealed or new regulations are made in their place. When the FRPRegs were promulgated, certain specific regulations that conflicted with them were repealed. It is not thought that any of the other regulations in force prior to the FRPA conflicted with the FRPA or the FRPRegs.

Source

New.

Coming into Force

**Coming into
force**

51. This Act shall come into force on a day to be fixed by order of the Governor in Council.

Notes

This section states that the FRPA will come into force when determined by Order in Council. The FRPA received Royal Assent on December 17, 1991 and came into force on September 15, 1992.

Source

New.

Federal Real Property Regulations

2.2 Text and Commentaries

(based on SOR/92-502, August 27, 1992, as amended by SOR/93-305, June 8, 1993)

Table of Contents

Section	Title	Page
	Overview of Federal Real Property Regulations	iii
1	Short Title	1
2	Interpretation	2
3	Application	7
4	General Ministerial Authority	10
5	Administration and Control	16
6	Administration or Administrative Responsibility	18
7	Acquisition Terms	23
8	Payment	24
9	Referral of Dispositions to the Minister of Justice	30
10	Option Terms	33
11	Document Depository	34

2. Federal Real Property Regulations

2.1 Overview

The Federal Real Property Regulations came into force on September 15, 1992 along with the *Federal Real Property Act*. The power to enact the Regulations comes from two different sources in the FRPA:

- the general authorities for regulations relating to real property transactions on the recommendation of the Treasury Board. These authorities are contained in subsection 16(2) of the Act. All of the FRPRegs, with the exception of sections 9 and 11, are based on these authorities; and
- the authority for regulations on the joint recommendation of the Treasury Board and the Department of Justice. These regulations relate to the referral of transactions to Justice and the document depository and are under subsection 15(2) of the Act. The portions of the FRPRegs that deal with these topics are sections 9 and 11.

Like the Act, the Regulations were developed jointly by the Department of Justice, with the Property Law Section as the lead branch, and the Treasury Board Secretariat, with the Bureau of Real Property and Materiel as the lead branch.

The Order in Council authorizing the FRPRegs listed the following regulations which were revoked on its promulgation:

- Government Land Purchase Regulations;
- Public Lands Leasing and Licensing Regulations;
- Public Lands Sale Regulations (Transport); and
- Public Works Leasing Regulations.

Various other regulations that had been authorized under the *Public Lands Grants Act* remained in force by virtue of paragraph 44(g) of the *Interpretation Act*. A list of these regulations, as of December 31, 1994, is contained in Appendix A of this section. These regulations either relate to natural resources (minerals and petroleum) on federal lands or to specific authorities that departments wanted to retain. It should be noted that there was an intention to revisit these regulations after an appropriate time to see if any more were no longer needed.

The Federal Real Property Regulations achieve four main purposes:

- give ministers legal authority to enter into transactions related to acquiring, disposing, optioning, licensing, transferring administration and transferring administration and control of real property. For most of these transactions, this was the first time legal authority was given directly to ministers without involving the Treasury Board or the Governor in Council;
- give ministers the legal authority to make certain payments related to acquiring real property and imposes certain controls, primarily related to title certification, on the full or partial

payment of the purchase price. These provisions are basically updates of ones formerly contained in the Government Land Purchase Regulations, although there are some new aspects to these, such as the ability to make partial payments before title certification and some new provisions relating to foreign acquisitions;

- set out the types of disposal instruments that must be settled and approved by Justice as to form and legal content. This is essentially a carry-over of Justice's previous role, taking into account the new types of instruments allowed to be used under the *Federal Real Property Act* and the direct ministerial authority to enter into dispositions pursuant to the Regulations; and
- describe the particulars of the document depository. The depository was intended to supplement existing government depositories for real property transaction instruments, again taking into account the new types of instruments allowed to be used under the *Federal Real Property Act* and the direct ministerial authority to enter dispositions and transfers pursuant to the Regulations.

As can be seen, the primary innovation of the FRPRegs was the ability for ministers to enter directly into transactions.

An amendment to the Government Contracts Regulations was made concurrently with the coming into force of the Federal Real Property Regulations. This amendment removed leases, and fit-up contracts that were part of a transaction authorized under the FRPA, from the scope of the Government Contracts Regulations. This was done to ensure these contracts were governed by the real property regime (the *Federal Real Property Act*, Regulations, and Treasury Board real property policies). Construction, fit-up and service contracts outside these transactions remain covered by the contracting regulations and policies.

2.2 List of Regulations under the *Federal Real Property Act*

The Canada Gazette, Part II lists the regulations under the *Federal Real Property Act*.

All of these regulations, with the exception of the Federal Real Property Regulations, were enacted under the *Public Lands Grants Act*. These regulations were affected by the repeal of the *Public Lands Grants Act* only to the extent that they were inconsistent with the provisions of the FRPA. There have been no indications that any of the prior regulations still in force conflict with the FRPA or the FRPRegs.

These prior regulations remain in force and are deemed to have been made under the FRPA until such time as they are repealed or new regulations are made in their place. Paragraph 44(g) of the *Interpretation Act* ensures this continuity in all cases where a statute is repealed and a new Act enacted in its place.

REGULATIONS RELATING TO FEDERAL REAL PROPERTY

Short Title

Short Title

1. These regulations may be cited as the Federal Real Property Regulations.
-

Notes

This section names the FRPRegs. The name "Federal Real Property Regulations" should be used when referring to the FRPRegs.

Related General Questions

None.

Authority

FRPA 16(2).

Source

New.

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy

None.

Interpretation

2. In these Regulations,

"acquisition" means an acquisition by Her Majesty of real property, including by lease, gift, devise, acceptance of a surrender of a lease of federal real property, or acceptance of a relinquishment of an easement on federal real property, but not including an acceptance of a transfer of administration and an acceptance of a transfer of administration and control; (*acquisition*)

Notes

This section provides the definition for the word "acquisition" in the regulations. "Acquisition" has to be defined in the FRPRegs because it is used various times in the FRPRegs and the word, although used in the FRPA, was not defined in the Act.

Defining the word in the FRPRegs rather than in the FRPA also leaves open the remote possibility that if a type of acquisition is not captured by the FRPRegs' definition, it would still be possible to make the acquisition using the Governor in Council authority under paragraph 16(1)(b) of the FRPA. Although the definition in the FRPRegs was intended to cover all types of acquisitions, there is always the potential for a differing judicial interpretation.

The definition makes it clear that "acquisition" applies not only to purchases of real property by the government, but also to any other type of acquisition, including:

- a lease by the government of non-federal property (leasing-in);
- a gift to the government;
- a bequest to the government in a will;
- an acceptance by the government of a tenant's surrendering a lease of government property; and
- an acceptance of a person's relinquishing an easement over federal property.

The definition of "acquisition" does not include acceptances of transfers of administration from other government departments or agent Crown corporations nor does it include acceptances of transfers of administration and control from the provinces. There are two basic reasons why these were not included in the definition:

- they are not acquisitions in the legal sense, as they are internal actions between two Crown entities. For this reason, Justice requested that they be treated separately; and
- various provisions in the FRPRegs, such as those relating to payments, do not apply to transfers of administration and transfers of administration and control but are intended to apply to all other additions to the federal inventory.

Note: The Real Property volume of the *Treasury Board Manual* defines "acquisition" to include transfers of administration and transfers of administration and control even though they are not acquisitions in the legal sense as they are internal actions between two Crown entities. This was done purposely so that as a general rule all additions to a department's inventory would be treated similarly. The policies in the volume make specific references to exceptions to this general rule.

Transactions involving licences are also not included in the definition of "acquisition." They were excluded, again at the request of Justice, because licences, in both common and civil law, are personal contracts and do not act as transfers of interests in real property. There are separate provisions for licences in the FRPA as well.

Note: A lease in civil law is normally not an interest in real property. However, a lease in common law transfers an interest in real property. As there were no policy reasons to distinguish between federal leases in the common law provinces and federal leases in Quebec, all federal leases are treated the same for the purposes of the FRPA and the FRPRegs.

Related General Questions

None.

Authority

FRPA 16(2)(b).

Source

New.

Related Sections in the FRPA, the FRP Regulations and TB Real Property Policy TBRP

- Glossary: definition of "acquisition"

"Act" means the *Federal Real Property Act* ; (Loi)

Notes

This clarifies that the FRPA is referred to as the "Act" in the FRPRegs. This reference is only made in sections 9 and 11 of the FRPRegs.

Related General Questions

None.

Authority

FRPA 16(2) – general power to make regulations.

Source

New.

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy

FRPA

- s. 1: short title

"disposition" means a disposition by Her Majesty of federal real property, including by lease, gift, surrender of a lease in which Her Majesty is the tenant, or relinquishment of an easement where Her Majesty is the holder of the easement, but not including a transfer of administration and a transfer of administration and control. (*aliénation*)

Notes

This section provides the definition for the word "disposition" in the FRPRegs. "Disposition" has to be defined in the FRPRegs as it is used various times in the FRPRegs and the word, although used in the FRPA, was not defined in the Act.

Defining the word in the FRPRegs rather than the FRPA also leaves open the possibility that if a type of disposition is not captured by the FRPRegs' definition, it would still be possible to make the disposition using the Governor in Council authority under paragraph 16(1)(a) of the FRPA. Although the definition in the FRPRegs was intended to cover all types of dispositions, there is always the potential for a differing judicial interpretation.

The definition makes it clear that "disposition" applies not only to sales of real property by the government, but also to any other type of disposition, including:

- a lease given by the government of federal property (leasing-out);
- a gift from the government;
- a surrender by the government of a lease where the government is the tenant; and
- a relinquishment by the government of an easement it has over non-federal property.

The definition of "disposition" does not include transfers of administration to other government departments or agent Crown corporations nor does it include transfers of administration and control to the provinces. There are two basic reasons why these were not included in the definition:

- they are not dispositions in the legal sense, as they are internal actions between two Crown entities. For this reason, Justice requested that they be treated separately; and
- the provision in the Regulations related to settling and approving dispositions does not apply to transfers of administration and transfers of administration and control.

Note: The Real Property volume of the *Treasury Board Manual* defines "disposition" to include transfers of administration and transfers of administration and control even though they are not dispositions in the legal sense as they are internal actions between two Crown entities. This was done purposely so that as a general rule all deletions from a department's inventory would be treated similarly. The policies in the volume specifically refer to exceptions to this general rule.

Section 2 – Interpretation

"Disposition"

Transactions involving licences are also not included in the definition of "disposition." They were excluded, again at the request of Justice, because they are not legally real property conveyances. Licences, in both common and civil law, are personal contracts and do not act as transfers of interests in real property. There are separate provisions for licences in the FRPA as well.

Note: A lease in civil law is normally not an interest in real property. However, a lease in common law transfers an interest in real property conveyances. As there were no policy reasons to distinguish between federal leases in the common law provinces and federal leases in Quebec, all federal leases are treated the same for the purposes of the FRPA and the FRPRegs.

Related General Questions

None.

Authority

FRPA 16(2)(a) – regulations on dispositions

Source

New.

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy

TBRP

- Glossary: definition of "disposition"

Application

3. (1) **These Regulations do not apply in respect of**
- (a) **expropriations of real property by Her Majesty; and**
 - (b) **dispositions, other than by lease, if the whole of the purchase price or other consideration is not received by Her Majesty at or before completion of the disposition.**
-

Notes

Section 3 limits the scope of the FRPRegs. Subsection 3(1) describes two classes of real property transactions that are not authorized or regulated by the FRPRegs.

Paragraph 3(1)(a) clarifies that the FRPRegs do not apply to expropriations. The legal authority for federal expropriations and the process to be followed in expropriations are contained in the *Expropriation Act*, RSC 1985, chapter E-21 and in specific expropriation provisions in other federal statutes.

Paragraph 3(1)(b) excludes dispositions, other than leases, where the entire purchase price is not paid to the Crown by the time the property is transferred. An example would be where the Crown sells a piece of land to someone who, instead of paying the full purchase price at the closing of the transaction, gives the Crown a mortgage for at least part of the purchase price. In such a case, by operation of paragraph 3(1)(b) of the FRPRegs, the minister selling the property will not be able to use the FRPRegs as the legal authority for the sale. Instead, the minister would need an Order in Council to authorize the sale pursuant to paragraph 16(1)(a) and (k) of the FRPA.

Any disposals where the purchase price is not paid in full were excluded from the FRPRegs because:

- such transactions by the federal government have been rare in the past;
- the requirement for Governor in Council approval of such transactions had not created any problems in the past; and
- it was felt that the special circumstances required to make such transactions preferable to immediate cash or cash-equivalent sales warrant Treasury Board approval and Governor in Council authorization of the transaction.

Specific provisions were included in the FRPA for Governor in Council approval of mortgages and similar transactions (16(1)(k)) and for regulations to be made relating to such transactions (16(2)(h)). Departments were consulted during the drafting of the FRPRegs to see if such regulations were necessary at that time. No need for such regulations was identified and the Bureau of Real Property Management agreed to revisit the issue should circumstances change.

Related General Questions

None.

Section 3 – Application

Subsection 1 – Expropriations and secured dispositions

Authority

FRPA 16(2)(a) – regulations on dispositions

Source

New.

Related Sections in the FRPA, the FRP Regulations and TB Real Property Policy

None.

Application

3. (2) Sections 7 to 10 do not apply in respect of leases, surrenders of leases and acceptances of surrenders of leases.

Notes

Subsection 3(2) states that the following sections of the FRPRegs do not apply to transactions involving leases:

- section 7 – terms of acquisitions;
- section 8 – payments on acquisitions;
- section 9 – referral of dispositions to Justice; and
- section 10 – option terms.

This preserved the status quo. Sections 7, 8, and 10 are based on previous sections in the Government Land Purchase Regulations, which only applied to purchases and did not apply to leasing-in situations. Section 9 extends the settlement and approval of Crown grants role of Justice to the new instruments for dispositions allowed under the FRPA. Prior to the FRPA and the FRPRegs, Justice was not required to settle and approve leases. There were no policy reasons for changing either of these practices.

Related General Questions

None.

Authority

For the references to sections 7, 8 and 10, the authority is the FRPA 16(2)(b) – regulations on acquisitions.

For the reference to section 9, the authority is the FRPA 15(2)(a) – referral of instruments to Justice.

Source

New.

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy

FRPRegs

- terms of acquisitions;
- s. 8: payments on acquisitions;
- s. 9: referral of dispositions to Justice; and
- s. 10: option terms.

General Authority

4. (1) A Minister may enter into an acquisition, a disposition or an option for an acquisition or for a disposition.

Notes

Subsection 4(1) provides a general legal authority for a minister to enter into real property conveyances:

- acquisitions;
- dispositions; and
- options for acquisitions and dispositions.

This authority is only tempered by

- the provisions of the FRPA related to executing instruments used in dispositions;
- the other provisions of the FRPRegs; and
- any other legislative or legal restrictions on ministerial authority.

Words to confirm that the minister could insert any terms or conditions in the conveyance "as desired" were not included in the subsection because the Justice drafters indicated that this concept was inherent in giving a minister authority to enter into the conveyance and adding any such words was superfluous. This same reasoning was applied by the drafters to the other authorities contained in the FRPRegs.

Related General Questions

None.

Authority

For acquisitions and options for acquisitions, the authorities are the FRPA 16(2)(b) – regulations on acquisitions and 16(2)(d) – regulations on acceptances of lease surrenders.

For dispositions and options for dispositions, the authorities are the FRPA 16(2)(a) – regulations on dispositions and 16(2)(d) – regulations on surrenders of leases.

Source

Prior to the FRPA and the FRPRegs, the authority for making regulations relating to ministerial acquisitions of real property and the entering into options for acquisitions was contained in section 41 of the *Financial Administration Act*, which read:

"41. (1) The Governor in Council may make regulations with respect to the conditions under which contracts may be entered into and, notwithstanding any other Act of Parliament,

Section 4 – General Ministerial Authority

Subsection 1 – Acquisitions, dispositions and options

- (a) may direct that no contract by the terms of which payments are required in excess of such amount or amounts as the Governor in Council may prescribe shall be entered into or have any force or effect unless entry into the contract has been approved by the Governor in Council or the Treasury Board; and*
- (b) may make regulations with respect to the security to be given to and in the name of Her Majesty to secure the due performance of contracts.*
- (2) Subsection (1) does not apply in respect of Crown corporations."*

The acquisition by purchase authority was previously contained in section 5 of the Government Land Purchase Regulations, which read:

" The Minister may

- (a) without the approval of the Treasury Board, purchase land where the price of and other consideration for the land do not, in the aggregate, exceed \$75,000; and*
- (b) with the approval of the Treasury Board, purchase land where the price of and other consideration for the land, in the aggregate, exceed \$75,000."*

The authority to enter into an option for an acquisition was previously contained in section 11 of the Government Land Purchase Regulations, which read:

" Subject to section 12, the Minister may

- (a) enter into an agreement for the acquisition of an option to purchase land of any value; and*
- (b) pay such amounts as may be payable by the Crown under the agreement for the acquisition of that option."*

Prior to the FRPA and the FRPRegs, authority for making regulations relating to ministerial dispositions of real property was contained in section 4 of the *Public Lands Grants Act*, which read:

" 4. (1) The Governor in Council may

- (a) authorize the sale, lease or other disposition of any public lands that are not required for public purposes and for the sale, lease or other disposition of which there is no other provision in the law;*
- (b) make regulations authorizing the Minister having the management, charge and direction of any such public lands to sell, lease or otherwise dispose of them, subject to such limitations and conditions as the Governor in Council may prescribe;"*

Additional authority to make regulations relating to dispositions was contained in section 61 of the *Financial Administration Act*, which read:

61. Subject to any other Act of Parliament, no transfer, lease or loan of public property shall be made to any person except on the direction of the Governor in Council or in accordance with regulations of the Governor in Council made on the recommendation of the Treasury Board."

Section 4 – General Ministerial Authority

Subsection 1 – Acquisitions, dispositions and options

This was done to ensure that the FRPA is the sole general authority for federal real property transactions.

No general regulations had been made under either the *Public Lands Grants Act* or the *Financial Administration Act* to grant ministers the authority to sell federal real property. Therefore, all sales were authorized by:

- the Governor in Council under paragraph 4(1)(a) of the *Public Lands Grants Act*; or
- the Governor in Council and/or the Minister of Public Works under the *Surplus Crown Assets Act*.

Regulations had been made under section 4 of the *Public Lands Grants Act* and section 61 of the *Financial Administration Act* to provide general ministerial authority for leasing-out and for granting licences. Section 3 of the Public Lands Leasing and Licensing Regulations, (which relied on the regulation-making authority of both Acts), read:

" Subject to sections 4 to 7, a Minister having the control, management and administration of public lands that are not required for public purposes and for the disposition of which there is no other provision in the law may, on behalf of the Crown, enter into a lease or grant a licence to use or occupy such lands."

There was no previous ministerial authority for the entering into of options for dispositions. Therefore, this type of option would have required Governor in Council authorization.

Related Sections in the FRPA, the FRP Regulations and TB Real Property Policy

FRPRegs

- s. 7: terms of acquisitions;
- s. 8: payments on acquisitions;
- s. 9: referral of dispositions to Justice;
- s. 10: option terms; and
- s. 11: document depository

4. (2) A Minister may, in respect of real property,
- (a) give a licence or acquire a licence; or
 - (b) relinquish a licence of which Her Majesty is the licensee, or accept the relinquishment of a licence of which Her Majesty is the licensor.
-

Notes

Subsection 4(2) contains a general legal authority for ministerial actions relating to licences:

- giving a licence to use federal property and accepting the relinquishment of such a licence; and
- acquiring a licence to use someone else's property and relinquishing such a licence.

Note: The FRPA definition of licence applies to "any right relating to real property that is not an interest in real property." "Licence" is defined as including all real property rights that are not covered under the definition of "real property" in the FRPA. This ensures that the FRPA and the FRPRegs are applied to any rights of use or occupation of real property which would not be an interest in real property under the law of the jurisdiction where they are situated or arise.

Words to confirm that the minister could insert any terms or conditions in the licence "as desired" were not included in the subsection because the Justice drafters indicated that this concept was inherent in giving a minister authority to enter into the licence and adding any such words was superfluous. This same reasoning was applied by the drafters to the other authorities contained in the FRPRegs.

Related General Questions

3.3.2 What is the difference between a lease and a licence?

Authority

For giving and acquiring licences, the authority is the FRPA 16(2)(c) – regulations on giving and acquiring licences.

For relinquishing licences, the authority is the FRPA 16(2)(d) – regulations on relinquishing licences.

Source

Prior to the FRPA and the FRPRegs, the authority for making regulations relating to contracting (including acquiring licences) was contained in section 41 of the *Financial Administration Act*, which read:

"41. (1) The Governor in Council may make regulations with respect to the conditions under which contracts may be entered into and, notwithstanding any other Act of Parliament,

- (a) may direct that no contract by the terms of which payments are required in excess of such amount or amounts as the Governor in Council may prescribe shall be entered into or have any force or effect unless entry into the contract has been approved by the Governor in Council or the Treasury Board; and*
- (b) may make regulations with respect to the security to be given to and in the name of Her Majesty to secure the due performance of contracts.*
- (2) Subsection (1) does not apply in respect of Crown corporations."*

Prior to the FRPA and the FRPRegs, authority for making regulations relating to ministerial dispositions of real property was contained in section 4 of the *Public Lands Grants Act*, which read:

- " 4. (1) The Governor in Council may*
- (a) authorize the sale, lease or other disposition of any public lands that are not required for public purposes and for the sale, lease or other disposition of which there is no other provision in the law;*
 - (b) make regulations authorizing the Minister having the management, charge and direction of any such public lands to sell, lease or otherwise dispose of them, subject to such limitations and conditions as the Governor in Council may prescribe;"*

Additional authority to make regulations relating to dispositions was contained in section 61 of the *Financial Administration Act*, which read:

- 61. Subject to any other Act of Parliament, no transfer, lease or loan of public property shall be made to any person except on the direction of the Governor in Council or in accordance with regulations of the Governor in Council made on the recommendation of the Treasury Board."*

This was done to ensure that the FRPA is the sole general authority for federal real property transactions.

Regulations had been made under section 4 of the *Public Lands Grants Act* and section 61 of the *Financial Administration Act* to provide general ministerial authority for leasing out and for granting licences. Section 3 of the *Public Lands Leasing and Licensing Regulations*, which relied on the regulation making authority of both Acts, read:

- " Subject to sections 4 to 7, a Minister having the control, management and administration of public lands that are not required for public purposes and for the disposition of which there is no other provision in the law may, on behalf of the Crown, enter into a lease or grant a licence to use or occupy such lands."*

Related Sections in the FRPA, the FRPRegs and TB Real Property Policy

None.

4. (3) A Minister may provide utilities and other services on or from federal real property that is under the Minister's administration and may impose fees, charges and rates for those services.

Notes

Subsection 4(3) provides a minister with the authority to provide and charge for utility and other services. Although providing and charging for such services had been common practice in the government prior to the FRPRegs, the absence of a specific provision led to some legal opinions questioning ministerial authority for the practice. Subsection 4(3) clarifies the existence of this authority.

Words to confirm that the minister could insert any terms or conditions in the agreement "as desired" were not included in the subsection because the drafters indicated that this concept was inherent in giving a minister authority to enter into the agreement and adding any such words was superfluous. This same reasoning was applied by the drafters to the other authorities contained in the FRPRegs.

Related General Questions

None.

Authority

FRPA 16(2)(i) – regulations on provision of services.

Source

New.

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy

None.

Administration and Control

5. (1) A Minister may transfer to Her Majesty in right of a province, by instrument satisfactory to the Minister of Justice, the administration and control of the entire or any lesser interest of Her Majesty in any federal real property, either in perpetuity or for any lesser term.

(2) A Minister may accept on behalf of Her Majesty a transfer of the administration and control satisfactory to the Minister of Justice of the entire or any lesser interest of Her Majesty in right of a province in any real property, including such transfers made by grant, vesting order or other conveyancing instrument, either in perpetuity or for any lesser term.

Notes

Subsection 5(1) states that a minister may transfer administration and control of federal real property to a provincial Crown. This subsection states that the transfer must be satisfactory to the Minister of Justice. Under subsection 11(1) of the FRPA such transfers must be signed by the minister administering the property and countersigned by the Minister of Justice.

Subsection 5(2) states that a minister may accept a transfer of administration and control of real property from a provincial Crown. The transfer must be satisfactory to the Minister of Justice. Under subsection 11(2) of the FRPA a grant, transfer, or vesting order from a province, once accepted, results in a transfer of administration and control from the provincial to the federal Crown.

The wording of subsection 5(2), by parallelling the wording of subsection 11(2) of the FRPA allows the federal Crown to accept a transfer of provincial Crown property regardless of the instrument by which the province desires to transfer the real property. If the transfer is accepted by the federal Crown, it amounts to a transfer of administration and control of real property. The paragraph removes any question of whether the federal Crown's right to accept a transfer of provincial Crown property is limited to certain types of instruments used for the transfer.

Although paragraphs 16(2)(e) and (f) allow regulations to be made relating to transfers of administration and control to and from Her Majesty in any right other than Canada, subsections 5(1) and (2) of the FRPRegs only authorize transfers to and from provinces. Therefore, a transfer of administration and control to or from another British Commonwealth jurisdiction where Her Majesty holds title to Crown lands must be done through an Order in Council under subsection 16(1) of the FRPA. The status quo was retained because such transfers have occurred rarely, if at all.

Related General Questions

- 3.4.3 What is the difference between "administration" and "administration and control?"
- 3.5.1 How does the FRPA affect transfers of administration and control between the federal and provincial Crowns?
- 3.5.2 Why must transfers of administration and control be countersigned by and/or be satisfactory to the Minister of Justice?
- 3.5.4 What is a vesting order?
- 3.5.5 What would be a transfer of a "lesser interest?"

Authority

For transfers to other governments, the authority is the FRPA 16(2)(e) – regulations on transfers of administration and control to other governments.

For accepting transfers, the authority is the FRPA 16(2)(f) – regulations on accepting transfers of administration and control from other governments.

Source

Prior to the FRPA and the FRP Regulations, transfers of administration and control from the federal government to provinces were authorized under subsection 4(2) of the *Public Lands Grants Act*, which read:

" 4. (2) The Governor in Council may by order transfer to Her Majesty in any right other than Canada the administration and control of the entire or any lesser interest of Her Majesty in right of Canada in any public lands not required for public purposes, either forever or for any lesser term, and subject to any conditions, restrictions or limitations that the Governor in Council considers advisable."

Prior to the FRPA and the FRP Regulations, transfers of administration and control were accepted by Orders in Council issued under the Royal prerogative because there was no specific statutory authorization.

Related Sections in the FRPA, the FRP Regulations and TB Real Property Policy

FRPA

- s. 11(1): signing of transfers of administration and control
- s. 11(2): effect of transfers from other governments
- s. 16(1)(e): GIC authorization of transfers of administration and control to other governments
- s. 16(1)(f): GIC acceptance of transfers of administration and control from other governments
- s. 16(2)(e): regulations on transfers of administration and control from the federal government
- s. 16(2)(f): regulations on for accepting transfers of administration and control to the federal government

FRP Regs

- s. 11: document depository

Administration or Administrative Responsibility

6. (1) A Minister may
- (a) transfer the administration of any federal real property to another Minister or to an agent corporation that has the authority under any other Act of Parliament to acquire the real property;
 - (b) transfer to another Minister the administrative responsibility for a licence of which Her Majesty is the licensee;
 - (c) accept the transfer of the administration of any federal real property from another Minister or from an agent corporation that has the authority under any other Act of Parliament to dispose of the real property; and
 - (d) accept from another Minister the transfer of the administrative responsibility for a licence of which Her Majesty is the licensee.
-

Notes

Subsection 6(1) contains a general legal authority for ministerial actions relating to transfers of administration (real property interests) and administrative responsibility (licences):

- transferring administration of federal real property to another minister or an agent Crown corporation and accepting such a transfer; and
- transferring administrative responsibility for a licence relating to non-federal property to another minister and accepting such a transfer.

Note: The licence transfer provisions only relate to situations where the Crown is the licensee, i.e., where the licence is for the Crown to use and/or occupy someone else's property. There was no reason to cover the situations where the Crown is the licensor, i.e., where the Crown has given a licence for someone to use or occupy federal property. In this situation, the only minister who should control such a licence would be the minister administering the property. This control over licences would be automatically transferred when administration of the property was transferred to another minister.

Two points should be noted about this subsection as it relates to transfers to and from agent Crown corporations. The first is that the subsection does not authorize agent corporations to transfer administration to ministers. Although the wide wording of paragraph 16(2)(g) would permit regulations to do this, it was decided that this issue would be dealt with in the anticipated future discussions with agent Crown corporations over the applicability of all or part of the FRPA and the FRPRegs to them.

The second point is that the provision only applies to transfers to and from agent Crown corporations that have authority through other legislation to acquire or dispose of real property. The problem is that not all agent corporations have been authorized by Parliament to conduct real property transactions. The specific real property powers of each agent Crown corporation must be examined case by case.

In drafting the FRPRegs, there was some concern that simply allowing ministers to transfer to and accept transfers from agent corporations would be an implied legal authorization for the corporations to make such transfers. This was unsatisfactory because, as stated above, the intention was that the 1992 FRPRegs would not provide new legal authority for Crown corporations to conduct real property transactions or transfers. The FRPRegs, at least initially, were intended to authorize ministerial transactions and transfers.

For this reason, subsection 6(1) had to be worded in a way that would not provide new authority to agent corporations but still provide new authority to ministers to transfer administration to agent corporations and accept transfers from them. This was accomplished by referring specifically to the powers of agent corporations under legislation other than the FRPA.

Note: There were two difficult technical issues in drafting this subsection regarding transfers to and from agent corporations. The first issue was that although it would have made sense to restrict transfers to and from corporations authorized by Parliament to transfer administration and accept such transfers, in reality very few statutes dealing with Crown corporations specifically talk about transfers of administration. However, a number of Crown corporation statutes and the *Financial Administration Act* do empower corporations to enter into real property transactions. Rather than determining case by case whether the general power to enter into transactions included transfers of administration, a policy decision was made to word subsection 6(1) so that only an authority to acquire or dispose of title to real property is required.

Why aren't transfers of administration to non-agent Crown corporations covered in this paragraph? Non-agent Crown corporations do not act as agents of the Crown and are therefore treated like any other non-governmental person.

Related General Questions

- 3.4.1 What is "administration" of federal real property?
- 3.4.2 Why was the change made to "administration?"
- 3.4.7 In the FRPA and Regulations, why was the wording "administrative responsibility" applied to licences rather than "administration?"
- 3.4.4 What are the main responsibilities of a minister in relation to the real property he or she administers?
- 3.4.5 Did the coming into force of the FRPA affect administration held by a minister?
- 3.4.6 Why are transfers of administration made?
- 3.4.3 What is the difference between "administration" and "administration and control?"

Authority

For transfers of administrative responsibility for licences, the authority is the FRPA 16(2)(c) – regulations on transfers of administrative responsibility between ministers.

For transfers of administration, the authority is the FRPA 16(2)(g) – regulations on transfers of administration.

Source

Prior to the FRPA and the FRPRegs, transfers of administration were normally done in two ways:

- By Order in Council under section 36 of the *Public Works Act*, which read:
"36. (1) The Governor in Council may transfer the management, charge and direction of any public work, or any power, duty or function with respect to any work or class of works, whether public or private, that is assigned to or vested by statute in any minister or department, to any other minister or department, and from the date appointed for that purpose by the Governor in Council, that power, duty or function shall be transferred to and vested in that other minister or department, and the provisions of this Act, in so far as they are applicable, apply to any work or property the maintenance, repair, control or management of which is transferred under this section.
(2) Any transfer referred to in subsection (1) may be made although the subject-matter thereof has previously been transferred from one department to another under the authority of this section."

This section was repealed by the FRPA;

- by the Minister of Public Works under the *Surplus Crown Assets Act*, again no longer applicable after the FRPA.

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy FRPA

- s. 2(1): definition of "administration"
- s. 16(1)(c): GIC transfers of administrative responsibility
- s. 16(1)(j): GIC transfers of administration
- s. 16(2)(c): regulations on transfers of administrative responsibility
- s. 16(2)(g): regulations on transfers of administration
- s. 18: administration

FRPRegs

- s. 9: referral of dispositions to Justice
- s. 11: document depository

Administration or Administrative Responsibility

6. (1.1) A Minister shall not
- (a) make a transfer to an agent corporation under paragraph (1)(a), or
 - (b) accept a transfer from an agent corporation under paragraph (1)(c)
- unless the transfer is consented to in writing by the agent corporation. SOR/93-305, June 8, 1993.
-

Notes

Subsection 6(1.1) clarifies that an agent Crown corporation must consent in writing to any transfer of administration to or from it.

This subsection was inserted in the FRPRegs through a June 1993 amendment. It was put in on the specific request of Canada Post Corporation. The corporation did not feel that the provisions of subsection 6(2) relating to executing transfers of administration adequately protected its client's interests.

Note: This subsection only applies to transfers of administration. There is no authority in the FRPA for regulations relating to the transfer of administrative responsibility for licences between a minister and an agent corporation.

Related General Questions

None.

Authority

FRPA 16(2)(g) – regulations on transfers of administration.

Source

New.

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy FRPA

- s. 2(1): definition of "administration"
- s. 16(1)(j): GIC transfers of administration
- s. 16(2)(g): regulations on transfers of administration
- s. 18: administration

Administration or Administrative Responsibility

6. (2) Every transfer and acceptance referred to in subsection (1) shall be in writing and shall be effective when it is signed by both parties and countersigned by the Minister of Justice.

Notes

This subsection requires that all transfers of administration and acceptances of such transfers must be in writing. This is to ensure that there is a record of these transfers.

The subsection further states that transfers of administration are only valid when they are signed by both parties, i.e., both ministers in cases of transfers between ministers or a minister and an agent Crown corporation in cases of transfers between a minister and a corporation.

There is a further requirement for the Minister of Justice to countersign each transfer of administration.

Related General Questions

None.

Authority

For transfers of administrative responsibility for licences, the authority is the FRPA 16(2)(c) – regulations on transfers of administrative responsibility between ministers.

For transfers of administration, the authority is the FRPA 16(2)(g) – regulations on transfers of administration.

Source

New.

Related Sections in the FRPA, the FRP Regulations and TB Real Property Policy **FRPA**

- s. 2(1): definition of "administration"
- s. 16(1)(c): GIC transfers of administrative responsibility
- s. 16(1)(j): GIC transfers of administration
- s. 16(2)(c): regulations on transfers of administrative responsibility
- s. 16(2)(g): regulations on transfers of administration
- s. 18: administration

Acquisition Terms

7. A Minister may

- (a) in an acquisition, agree to pay, in addition to the purchase price of and other consideration for the real property, such amounts as the Minister may approve in respect of the legal fees and disbursements of the real property owner that are reasonably incurred, and any taxes and other adjustments; and
 - (b) where the completion of an acquisition is unreasonably delayed through no fault of the real property owner, pay interest at a rate that is calculated for the period of the delay and that is not greater than one and one-half per cent above the average accepted tender rate of Government of Canada three month Treasury Bills, as announced each week by the Bank of Canada on behalf of the Minister of Finance, which tender rate shall be the last tender rate to be announced before the day on which the contract was executed.
-

Notes

This section provides a minister with the authority to make certain types of payments in connection with the purchase of real property. It is intended to provide the minister with the flexibility to make such payments if the minister considers it advisable in the circumstances of the particular purchase.

Subsection 3(2) of the FRPRegs makes it clear that this section does not apply in respect of leases, surrenders of leases and acceptances of surrenders of leases. It also does not apply to licences because "acquisition" is defined to not include a licence.

Related General Questions

None.

Authority

FRPA 16(2)(b) – regulations on acquisitions.

Source

With the exception of a few minor changes it is essentially identical to section 8 of the repealed Government Land Purchase Regulations.

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy

None.

Payment

8. (1) Subject to subsections (2) to (5), no payment shall be made in respect of an acquisition until good title satisfactory to the Minister of Justice is obtained through that Minister.

Notes

This subsection requires that the Minister of Justice certify the title to land being purchased prior to paying the purchase price. The payment of the purchase price, and not the authority to enter into the conveyance, is conditional upon compliance with the subsection.

Exceptions to this requirement are contained in subsections 2 to 5:

- partial payments within Canada – 8(2)
- options to buy – 8(3)(a)
- confidential acquisitions – 8(3)(b)
- foreign acquisitions – 8(4), 8(5)

Subsection 3(2) of the FRPRegs makes it clear that this subsection does not apply in respect of leases, surrenders of leases and acceptances of surrenders of leases. It also does not apply to licences because "acquisition" is not defined to include a licence.

Related General Questions

None.

Authority

FRPA 16(2)(b) – regulations on acquisitions.

Source

Subsection 8(1) is based on paragraph 10(a) of the Government Land Purchase Regulations, which relates to purchases and read:

"No payment may be made in respect of a purchase of land

(a) before delivery of a good title satisfactory to and to be obtained through the Deputy Minister of Justice..."

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy

None.

Payment

8. (2) A Minister may make a partial payment in respect of an acquisition of real property that is within Canada, before the completion of the acquisition, under an arrangement satisfactory to the Minister of Justice that ensures its repayment to Her Majesty if the Minister of Justice is not satisfied as to good title.

Notes

This subsection allows deposits, down payments and other partial payments to be made prior to the closing of an acquisition within Canada. Such a payment must be made under an arrangement satisfactory to Justice ensuring return of the payment if the vendor's title is not satisfactory.

This type of arrangement has been common in private sector agreements of purchase and sale of real property for some time, but the federal government had not previously been able to use it because of the Government Land Purchase Regulations prohibition against payment before closing. Eliminating this prohibition promoted the policy objective in the FRPA and the FRPRegs of having consistency between private and federal real property practices wherever practical.

Subsection 3(2) of the FRPRegs states that this subsection does not apply in respect of leases, surrenders of leases and acceptances of surrenders of leases. It also does not apply to licences because "acquisition" is not defined to include a licence.

Related General Questions

None.

Authority

FRPA 16(2)(b) – regulations on acquisitions.

Source

New.

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy

None.

Payment

8. (3) Subsections (1) and (2) do not apply in respect of
- (a) an option for an acquisition; or
 - (b) an acquisition entered into by the Minister responsible for the Canadian Security Intelligence Service for the purpose of pursuing security investigations or by the Minister responsible for the Royal Canadian Mounted Police for the purpose of pursuing security or criminal investigations.
-

Notes

Paragraph 8(3)(a) makes it clear that the certifying title requirement does not apply to payments for options to buy property. Typically, only a preliminary title search is done before entering into an option to determine whether the option is being obtained from the owner of the property. Requiring a full title search prior to receiving an option would be inconsistent with the purpose of an option, i.e., an expedient manner of keeping alternatives open while analyzing what property should be acquired.

Paragraph 8(3)(b) makes an exception to the certification of title requirement in two cases where expediency and confidentiality of the transaction are necessary, namely in acquisitions made by the Minister responsible for CSIS for the purpose of pursuing security investigations, and acquisitions made by the Minister responsible for the RCMP for the purpose of pursuing RCMP investigations. The instruments relating to these transactions also do not have to be

- settled and approved by Justice under section 9 of the FRPRegs; or
- deposited in Justice's document depository under section 11 of the FRPRegs.

Related General Questions

None.

Authority

FRPA 16(2)(b) – regulations on acquisitions.

Source

The exception for the Minister responsible for CSIS was based on section 10.1 of the Government Land Purchase Regulations, which read:

" Paragraph 10(a) does not apply in respect of a purchase of land pursuant to section 5.1 [a purchase by the Minister responsible for CSIS]. "

The exception for the Minister responsible for the RCMP is new.

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy

FRPRegs

- 11(1): Document depository

8. (4) The Secretary of State for External Affairs may, in respect of the acquisition of real property outside Canada, make a payment if the payment
- (a) is in accordance with the commercial practice of the jurisdiction in which the real property is situated;
 - (b) is paid under an arrangement that ensures its repayment to Her Majesty if good title satisfactory to the Minister of Justice cannot be obtained or the title or ownership cannot be certified by a person who is hired to perform legal services pursuant to section 4 of the Government Contracts Regulations; and
 - (c) is paid under an arrangement that ensures immediate possession by Her Majesty when full payment is made.
-

Notes

This subsection creates another exception to the certification of title requirement. This exception relates to purchases of property in foreign countries by the Secretary of State for External Affairs (now the Minister of Foreign Affairs). For the exception to apply, three conditions must be met:

- the payment must be consistent with local commercial practices;
- the payment must be made under an arrangement allowing for the return of the payment if title cannot be certified; and
- the Crown must have possession of the property when full payment is made.

The first condition simply reflects that such payments should only be made where local commercial practices permit. This is consistent with the "good corporate citizen" policy of the federal government.

The second condition reflects the practice that legal advice on many foreign real property transactions is provided by lawyers practising in the jurisdiction where the property is located rather than lawyers employed by the Department of Justice. These local lawyers are hired by the Minister of Foreign Affairs under the provisions of section 4 of the Government Contracts Regulations, which reads:

"4. Contracts for the performance of legal services may be entered into only by or under the authority of the Minister of Justice."

The third condition was inserted because in some foreign jurisdictions, such as Hong Kong, it is common to pay most or all of the purchase price to the vendor prior to closing the transaction. The immediate possession upon full payment protects the Crown and is consistent with the practices of these jurisdictions.

Subsection 3(2) of the Regulations clarifies that this subsection does not apply in respect of leases, surrenders of leases and acceptances of surrenders of leases. It also does not apply to licences because "acquisition" is not defined to include a licence.

Related General Questions

3.2.15 Why are there different rules for foreign transactions?

Authority

FRPA 16(2)(b) – regulations on acquisitions.

Source

New.

Related Sections in the FRPA, the FRP Regulations and TB Real Property Policy

None.

Payment

8. (5) Notwithstanding subsection (4), the Secretary of State for External Affairs may, in respect of the acquisition of real property that is situated in a jurisdiction in which the title to or ownership of real property within that jurisdiction cannot be determined or certified by and to the satisfaction of the Minister of Justice, make a payment if the payment

- (a) is in accordance with the commercial practice of the jurisdiction in which the real property is situated; and**
 - (b) is paid under an arrangement that ensures immediate possession by Her Majesty when full payment is made.**
-

Notes

Subsection 8(5) creates a further exception for foreign acquisitions where the land-tenure system in the foreign jurisdiction precludes title certification. This has occurred in the past in countries such as the Republic of China where a system of land registration did not exist. The subsection would also except those cases where title certification is impossible because of war or disaster.

For this exception to apply, the first and third conditions in the subsection 8(4) exception must apply. In addition, Justice must be satisfied that title cannot be determined or certified.

Subsection 3(2) of the FRPRegs makes it clear that this section does not apply in respect of leases, surrenders of leases and acceptances of surrenders of leases. It also does not apply to licences because "acquisition" is defined to not include a licence.

Related General Questions

None.

Authority

FRPA 16(2)(b) – regulations on acquisitions.

Source

New.

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy

None.

Referral of a Disposition to the Minister of Justice

9. (1) Subject to subsection (2), a Minister shall refer every disposition to the Minister of Justice for settlement and approval of the form and legal content of the Crown grant.

(2) Subsection (1) does not apply to

- (a) the Secretary of State for External Affairs, if the performance of legal services in respect of a disposition is authorized pursuant to section 4 of the Government Contracts Regulations; or**
- (b) the Minister responsible for the Royal Canadian Mounted Police or the Minister responsible for the Canadian Security Intelligence Service, if a disposition is in respect of real property acquired for the purpose of pursuing investigations described in paragraph 8(3)(b).**

Notes

Subsection 9(1) requires Justice to settle and approve the form and legal content of Crown grants used for dispositions under the FRPRegs. This clarifies that Justice's role of settling and approving Crown grants did not change with the enactment of the FRPA and the FRPRegs.

The *Department of Justice Act*, paragraph 5(c), states that the Minister of Justice shall settle and approve all instruments issued under the Great Seal, such as letters patent. As the new types of disposal instruments allowed under the FRPA, i.e., the instruments of grant, provincial instruments and plans, are not issued under the Great Seal, the *Department of Justice Act* provision does not apply to them. Therefore, settlement and approval of the new Crown grant was necessary to make sure that Her Majesty's legal interests would be protected in the same way for letters patent and the new classes of Crown grants.

Subsection 9(2) provides two exceptions to the Justice settlement and approval requirement:

- Foreign Affairs disposals where a foreign lawyer is providing legal advice to the department; and
- disposals of property acquired by CSIS and the RCMP for confidential investigations.

In addition, subsection 3(2) of the FRPRegs states that this section does not apply in respect of leases, surrenders of leases and acceptances of surrenders of leases. It also does not apply to licences because "disposition" is not defined to include a licence.

Related General Questions

- 3.2.9 Why must the instruments of grant and the provincial instruments be signed by both the minister administering the real property and the Minister of Justice?
- 3.2.8 Why isn't the approval of the Minister of Justice required for Crown grants using foreign instruments?
- 3.2.15 Why are there different rules for foreign transactions?

Section 9 – Referral of Dispositions to the Minister of Justice
Subsections 1 and 2 – General rule and exceptions

Authority

FRPA 15(2)(a) – referral of instruments to Justice.

Source

New.

Related Sections in the FRPA, the FRP Regulations and TB Real Property Policy

FRPRegs

- s. 9(3): proof of settlement and approval by Justice

Referral of a Disposition to the Minister of Justice

9. (3) Where, pursuant to subsections 5(6) and 7(2) of the Act, a Crown grant is to be countersigned by the Minister of Justice, the countersignature is conclusive evidence that the Minister of Justice has settled and approved the form and legal content of the Crown grant.

Notes

Subsection 9(3) clarifies that Justice's countersignature on Crown grants acts as proof of compliance with this section. This is intended to ensure that no questions on the title to the property are ever raised relating to whether Justice had settled and approved the grant. Future title searches may occur many years after the grant takes place when other evidence of Justice settlement and approval may not be readily available.

Reference to subsections of the FRPA relates to Justice's countersignature on:

- instruments of grant and provincial instruments, other than leases – subsection 5(6); and
- plans used as disposal instruments – subsection 7(2).

Justice need not countersign foreign instruments used to grant property abroad under subsection 5(3) of the FRPA. Where Justice is providing the legal advice and a foreign instrument is used for the Crown grant, Justice still has to settle and approve the instrument under subsection 9(1).

Related General Questions

None.

Authority

FRPA 15(2)(a) – referral of instruments to Justice;

FRPA 16(2)(a) – regulations on dispositions.

Source

New.

Related Sections in the FRPA, the Regulations and TB Real Property Policy

FRPRegs

- ss. 9(1) and (2): general rule on referral to Justice and exceptions

Option Terms

10. Where a Minister, in an option for an acquisition, is granted the right to enter and conduct tests in respect of the real property that is subject to the option, the Minister may agree with the person granting the option

- (a) to indemnify that person from all claims and demands that arise as a result of the Minister exercising the right to enter;**
 - (b) to repair or to pay compensation in respect of any damage done to any real property of that person, other than the real property that is the subject of the option, that arises as a result of the Minister exercising the right to enter; and**
 - (c) in the event that the option is not exercised, to repair or to pay compensation for any damage done to the real property that is subject to the option that arises as a result of the Minister exercising the right to enter.**
-

Notes

This section provides a minister with the authority to make certain covenants in connection with soil and other testing of lands which the minister has an option to acquire. Under these covenants, a minister may agree to repair any damages to the lands caused by the testing or to pay compensation to the owner of the lands for any such damages. The section is intended to provide the minister with the flexibility to make such covenants in the option agreement if warranted in the circumstances of the particular situation.

This section is essentially identical to a previous section contained in the Government Land Purchase Regulations.

Subsection (2) of the FRPRegs makes it clear that this section does not apply in respect of leases, surrenders of leases and acceptances of surrenders of leases. It also does not apply to licences because "acquisition" is not defined to include a licence.

Related General Questions

None.

Authority

FRPA 16(2)(b) – regulations on acquisitions.

Source

With the exception of a few minor changes it is essentially identical to subsection 13(1) of the repealed Government Land Purchase Regulations.

Related Sections in the FRPA, the FRPRegs and TB Real Property Policy

None.

Document Depository

11. (1) The Minister of Justice shall establish and operate a document depository at the Department of Justice that shall contain copies of the following instruments:

- (a) grants of federal real property, including grants by instruments referred to in paragraph 5(1)(b), subsections 5(2) and (3) and section 7 of the Act, other than letters patent, notifications, leases or grants in respect of a disposition of any real property that was the subject of an acquisition described in paragraph 8(3)(b);**
 - (b) transfers of administration and control of real property and acceptances of such transfers;**
 - (c) transfers of administration of federal real property and acceptances of such transfers; and**
 - (d) transfers of administrative responsibility for a licence and acceptances of such transfers.**
-

Notes

This subsection sets out what types of instruments shall be deposited in the Department of Justice document depository. The four general types are:

- Crown grants (disposals) with certain exceptions noted below;
- transfers and acceptances of transfers of administration and control;
- transfers and acceptances of transfers of administration; and
- transfers and acceptances of transfers of administrative responsibility for licences.

The subsection is based on the policy intention that the document depository was only to contain Crown grants and administrative transfers. For that reason, the various following instruments affecting federal real property were excluded from the depository:

- acquisition instruments;
- leases (both leasing-in and -out);
- licences; and
- Crown grants, i.e., letters patent and notifications, that are kept in other government depositories.

Paragraph 11(1)(a) describes four types of Crown grants that may be deposited, as follows:

- instruments of grant;
- provincial disposal instruments;
- foreign disposal instruments; and
- plans used as disposal instruments.

The FRPA either created or for the first time authorized these four types of instruments to be used as Crown grants by the federal government. And the FRPRegs allowed ministers, for the first time, to issue Crown grants (outside the territories) without requiring Orders in Council or instruments under the Great Seal. Therefore, without paragraph 11(1)(a), there would have been no government depository for these types of Crown grants when issued by ministers under the authority of subsection 4(1) of the FRPRegs.

Section 11 – Document Depository

Subsection 1 – Instruments to be deposited

Paragraph 11(1)(a) excludes from the document depository leases and notifications (as noted above) and also excludes instruments used for disposals of property acquired by CSIS and the RCMP for confidential investigations.

Note: Paragraph 11(1)(a) is worded so it covers not only the four types of grants listed above and the exceptions, but also any other kind of Crown grant. However, this wording was used due to caution rather than because other types of Crown grants were known to be used by the government. Therefore, all Crown grants fall within these four types or within the types of grants excluded in paragraph 11(1)(a).

Paragraph 11(1)(b) covers transfers and acceptances of transfers of administration and control, whether by an Order in Council or pursuant to the FRPRegs. Prior to the FRPA and the FRPRegs, all such transfers and acceptances were accomplished through Orders in Council.

Paragraph 11(1)(c) covers transfers and acceptances of transfers of administration, whether by an Order in Council or pursuant to the FRPRegs. As stated in the discussion on section 6 of the FRPRegs, prior to the FRPA and the FRPRegs transfers of administration were done under the *Public Works Act* or the *Surplus Crown Assets Act* and were normally accomplished through Orders in Council.

Paragraph 11(1)(d) covers transfers and acceptances of transfers of administrative responsibility for licences.

Related General Questions

3.2.1 What kinds of documents can be used to issue Crown grants of federal lands under the FRPA?

3.2.2 What is a notification?

Authority

FRPA 15(2)(b) – regulations on the document depository.

Source

New.

Related Sections in the FRPA, the FRPRegulations and TB Real Property Policy

None.

Document Depository

11. (2) Except in the case of a disposition of real property that was the subject of an acquisition described in paragraph 8(3)(b), a copy of the instrument shall immediately be sent to the document depository by the Minister who

- (a) ceases to have the administration of any federal real property by virtue of
 - (i) a grant referred to in paragraph (1)(a),
 - (ii) a transfer of administration and control of the federal real property to Her Majesty in any right other than of Canada, or
 - (iii) a transfer of administration of the federal real property to an agent corporation;
 - (b) acquires the administration of any federal real property by virtue of
 - (i) a transfer of administration and control of real property to Her Majesty and the acceptance of that transfer, or
 - (ii) a transfer of administration of the federal real property from another Minister or an agent corporation and the acceptance of the transfer; or
 - (c) acquires the administrative responsibility for a licence by virtue of a transfer referred to in paragraph (1)(d) and the acceptance of the transfer.
-

Notes

Subsection 11(2) describes who is responsible for depositing copies of instruments in the depository. The last minister to have contact with the instruments before the transaction was completed is the minister who:

- issues a Crown grant for property under his or her administration;
- transfers administration and control of property under his or her administration;
- transfers to an agent Crown corporation the administration of property under his or her administration;
- accepts a transfer of administration and control;
- accepts a transfer of administration; and
- accepts a transfer of administrative responsibility for a licence.

Again, the subsection does not apply to instruments used for disposing of property acquired by CSIS and the RCMP for confidential investigations.

The document depository is managed by the Property Law Section of the Department of Justice.

Related General Questions

None.

Section 11 – Document Depository

Subsection 2 – Ministers responsible for depositing instruments

Authority

FRPA 15(2)(b) – regulations on the document depository.

Source

New.

Related Sections in the FRPA, the FRP Regulations and TB Real Property Policy

None.

Document Depository

11. (3) Instruments and information may be recorded or stored in the document depository by any means.

Notes

Subsection 11(3) clarifies that instruments and information may be deposited or stored in the depository by any means. This is intended to ensure the flexibility to use current electronic and non-electronic data storage and information management practices.

Related General Questions

None.

Authority

FRPA 15(2)(b) – regulations on the document depository.

Source

New.

Related Sections in the FRPA, the FRP Regulations and TB Real Property Policy

None.

General Questions on the *Federal Real Property Act* and Regulations

3. General Questions on the *Federal Real Property Act* and Regulations

Table of Contents

Section	Question	Page
3.1	Scope of the Act and Regulations	4
3.1.1	Why should there be authority for interdepartmental delegation of authority?	4
3.1.2	Does the FRPA affect the federal Crown rights of acquiring and disposing under other acts of Parliament, such as the <i>National Parks Act</i> , etc.?	4
3.1.3	How does the FRPA affect Indian lands?	4
3.1.4	Why did the FRPA change the requirement that federal real property had to be either "surplus" or "not required for public purposes" before it could be sold or transferred?	4
3.1.5	What protection is there to ensure that real property required for public purposes is not disposed of?	5
3.1.6	Did the FRPA change the procedures for disposing of surplus lands?	5
3.1.7	How did the requirement limiting the disposal of federal real property to that "not required for public purposes" create difficulties in lease-leaseback agreements?	5
3.1.8	Why was the authorization to acquire and dispose of property placed in the FRPA?	6
3.1.9	Why would the Crown want to finance a purchase of real property?	6
3.1.10	Why would the Crown want to take a security to guarantee a part of the payment for real property?	6
3.1.11	Did the FRPA cause the rent or utility charges to tenants on public lands to increase?	6
3.1.12	Does this contradict section 19 of the <i>Financial Administration Act</i> ?	7
3.1.13	What are the specific powers and authorities of the Treasury Board under the FRPA?	7
3.1.14	What did the FRPA change in regard to real property in the Yukon and Northwest Territories?	7
3.2	Crown Grants	9
3.2.1	What kinds of documents can be used to issue Crown grants of federal lands under the FRPA?	9
3.2.2	What is a notification?	9
3.2.3	What are letters patent under the Great Seal?	9
3.2.4	How are letters patent issued?	10

3.2.5	Were letters patent eliminated under the FRPA? If not, why not eliminate letters patent altogether? Why is an alternative instrument needed for letters patent? Is there a difference in legal effect between "instruments of grant" and grants made by letters patent?	10
3.2.6	Does the use of provincial instruments result in adopting provincial law?	11
3.2.7	What are some examples of provincial conveyancing documents that could be used for Crown grants under the FRPA?	11
3.2.8	Why isn't the approval of the Minister of Justice required for Crown grants using foreign instruments?	11
3.2.9	Why must the instruments of grant and the provincial instruments be signed by both the minister administering the real property and the Minister of Justice?	11
3.2.10	What are "words of limitation?"	11
3.2.11	Why would the federal government want the right to be able to grant real property to itself?	12
3.2.12	Why are there different rules for foreign transactions?	12
3.3	Real Property Conveyances	13
3.3.1	What are servitudes and easements?	13
3.3.2	What is the difference between a lease and a licence?	13
3.3.3	What is a surrender of a lease?	13
3.3.4	What is a relinquishment of a licence?	14
3.3.5	What did the FRPA change in the governmental processes relating to surrenders of leases and relinquishments of licences?	14
3.3.6	What is fee simple?	14
3.4	Administration	15
3.4.1	What is "administration" of federal real property?	15
3.4.2	Why was the change made to "administration?"	15
3.4.3	What is the difference between "administration" and "administration and control?"	15
3.4.4	What are the main responsibilities of a minister in relation to the real property he or she administers?	16
3.4.5	Did the coming into force of the FRPA affect administration held by a minister?	16
3.4.6	Why are transfers of administration made?	16
3.4.7	In the FRPA and the FRPRegs why was the wording "administrative responsibility" applied to licences rather than "administration?"	17
3.5	Administration and Control	18
3.5.1	How did the FRPA affect transfers of administration and control between the federal and provincial Crowns?	18
3.5.2	Why must transfers of administration and control be satisfactory to and be countersigned by the Minister of Justice?	18

3.5.3	How and under what authority did the federal government accept transfers of administration and control prior to the FRPA?	18
3.5.4	What is a vesting order?	18
3.5.5	What would be a transfer of a "lesser interest?"	18
3.6	Department of Justice	19
3.6.1	What kinds of transactions are referred to the Minister of Justice?	19
3.6.2	Why is the document depository necessary?	19
3.7	Crown and other Government Corporations	20
3.7.1	What is the difference between Crown corporations, agent corporations, and departmental corporations?	20
3.7.2	Did the coming into force of the FRPA affect administration held by a Crown corporation?	20
3.7.3	Did this mean that a Crown corporation that managed, charged and directed real property would suddenly lose its power to dispose of the property and retain the proceeds from the disposal because it would only have "administration" of the property?	21

3.1 Scope of the Act and Regulations

3.1.1 Why should there be authority for interdepartmental delegation of authority?

This type of delegation allows the government's real property dealings to be managed efficiently. There may be occasions where a minister wishes to delegate the requisite power or authority in relation to a real property transaction to someone outside his or her department. For example, an official in a regional office of the Department of Public Works and Government Services could be delegated the authority to act on behalf of another minister's department; or a head of mission could act in foreign transactions.

There may be occasions where a minister wishes to delegate the requisite power or authority in relation to a real property transaction to another minister. For example, the Minister of Public Works and Government Services could be delegated the authority to act on behalf of another minister's department; or External Affairs could act in foreign transactions.

3.1.2 Does the FRPA affect the federal Crown rights of acquiring and disposing under other Acts of Parliament, such as the *National Parks Act*, etc.?

No. The rights of acquiring and disposing of real property as defined under other Acts of Parliament are unaffected by the FRPA. The FRPA was designed not to affect the application of existing legislation to federal Crown lands such as national parks, Indian lands, or territorial lands. The rights of Crown corporations as defined under their own Acts or the FAA to acquire and dispose of real property are also not affected by the FRPA.

3.1.3 How does the FRPA affect Indian lands?

The FRPA was intended to be neutral vis-à-vis Indian lands. The FRPA was designed not to affect the application of pre-existing legislation to federal Crown lands such as Indian lands. The authority of the Minister of Indian Affairs and Northern Development to deal with and dispose of reserve lands continues to be governed by the *Indian Act*.

3.1.4 Why did the FRPA change the requirement that federal real property has to be either "surplus" or "not required for public purposes" before it can be sold or transferred?

The FRPA removed the restriction from the *Public Lands Grants Act*, the *Public Works Act*, and the *Surplus Crown Assets Act* which limited disposal to real property which was either "surplus" or "not required for public purposes."

The words "not required for public purposes" were first used in connection with disposing of federal real property in the late 1800s. This restriction created difficulties for the Crown to complete real property transactions.

For example, the preceding condition that real property be "not required for public purposes" was an obstacle in making grants of federal real property to agent Crown corporations, whose purposes are federal public. It would not have been possible to use the disposal authority in the previous legislation to authorize a disposition of real property owned by the federal Crown to the National Museums of Canada, given that the previous legislation required the property be "not required for public purposes" and that the National Museums of Canada would use the property for public purposes.

Another example would be a situation in which the Crown owns a 20-storey office building, but over time only needs one floor for government program purposes. Good real property management practices would suggest that the building be sold and the needed floor space rented from the new owners, thereby eliminating the overhead involved in managing the entire building. In addition, Treasury Board policy requires that real property not required for program purposes be sold. However, it could be argued under previous law that this could not be done because a portion of the building would still have been required for public purposes.

3.1.5 What protection is there to ensure that real property required for public purposes is not disposed of?

The federal real property regime is based on the premise that real property is to be held for the purposes of the government's programs. Therefore, under Treasury Board policy, a minister's disposal of real property is limited to those cases where:

- the property is no longer needed for the purposes of the minister's department; or
- the disposition itself furthers the programs of the minister's department.

Likewise, the policy provides that a minister may only acquire real property when it is required for the purposes of the minister's department.

3.1.6 Did the FRPA change the procedures for disposing of surplus lands?

Under section 42 of the FRPA, the *Surplus Crown Assets Act* and the procedures for disposing of surplus property under that Act no longer apply to real property. The procedures for disposing of lands no longer required by a department for its programs, like all other procedures relating to acquiring and disposing of public lands, were examined in developing the FRPRegs and Treasury Board policy in connection with the FRPA. In the interests of consistency the Minister of Public Works and Government Services, whose department has much expertise in disposing of surplus property, continues to have the major role in these disposals.

3.1.7 How did the requirement limiting disposal of federal real property to that "not required for public purposes" create difficulties in lease-leaseback agreements?

The requirement that federal real property be "not required for public purposes" led to a serious problem a few years ago in relation to the government's desire to enter into a variety of leasing transactions. Crown lease-leaseback transactions normally entail the Crown providing developers with a long-term ground lease (e.g., 35 years) whereby the tenant would covenant that it would

construct a building to the Crown's specifications and upon completion would sublease the building to the Crown for almost the same period of time as the ground lease (minus a few days). The lease normally would also contain an option to purchase in favour of the Crown. An example of such a lease-leaseback transaction is the 240 Sparks Street complex in Ottawa.

The concern was raised that given that the Crown was obtaining a long-term sublease of the very property it had leased by way of the ground lease, this was indicative that the property was in fact still required for public purposes. It was therefore argued that there was no authority to enter into such a lease-leaseback agreement.

Consequently in 1985, the *Public Lands Grants Act* and the *Public Works Act* were amended to provide clear legislative authority for the Crown to enter into these transactions. Given the broad wording of paragraph 16(1)(a) of the FRPA, there is no longer a requirement for the 1985 amendments and these sections were repealed in the FRPA.

3.1.8 Why was the authorization to acquire and dispose of property placed in the FRPA?

This brought the authority to acquire real property under the same Act as the authority to dispose and promoted consistency in real property management. It made sense to include in one statute the federal authorities pertaining to both acquiring and disposing of real property by the federal Crown, including the power to make orders and regulations for these purposes.

Prior to the FRPA, the primary general disposing authority was under the *Public Lands Grants Act* and the leasing of real property was governed by the Government Contracts Regulations under the FAA, while acquisitions were governed by the Government Land Purchase Regulations made under the FAA. When it was enacted, the FRPA became the primary general authority for both disposing of and acquiring federal real property.

3.1.9 Why would the Crown want to finance a purchase of real property?

To help sell the property. For example, financing the purchase could help maintain a satisfactory sale price or even make it easy to sell the real property in a slow market.

3.1.10 Why would the Crown want to take a security to guarantee a part of the payment for real property?

A security is necessary to protect the interests of the Crown in the money owed to it.

3.1.11 Did the FRPA cause the rent or utility charges to tenants on public lands to increase?

No. The Act clarified the authority for what had been the existing practice for many years. The FRPA makes it clear that, where appropriate, market rates can be charged for government services relating to federal real property.

Charging rent to tenants of federal real property is based on the market rate approach, with any exceptions based on policy considerations. This approach ensures that the government acts

consistently, fairly, and equitably in the best interest of all taxpayers within the context of good financial management practices. It should also be noted that the FRPA provision does not affect property for which specific provisions for setting rental rates are already provided under specific program legislation, such as the *National Parks Act* or the *Fishing and Recreational Harbours Act*. In relation to utility charges, these are primarily being made on a cost basis, and this has not changed.

3.1.12 Does this contradict section 19 of the *Financial Administration Act*?

No. Section 19 is intended to regulate charges for services provided by the Crown to the public. The *Federal Real Property Act* provisions are intended to regulate charging for rent and services provided as a matter of contract between the Crown and third parties.

3.1.13 What are the specific powers and authorities of the Treasury Board under the FRPA?

The *Federal Real Property Act* underscores the central role of the Treasury Board in managing federal real property. The Act provides the Treasury Board with the powers and authorities to ensure the efficient and effective management of federal public lands. Some of the specific powers and authorities of the Treasury Board under the FRPA are:

- the authorities given to the Governor in Council under subsection 16(1) of the Act may only be exercised on the recommendation of the Treasury Board;
- through the operation of subsections 15(2) and 16(2), any regulations made under the FRPA must be on the recommendation of the Treasury Board, either on its own (in the case of regulations under subsection 16(2)) or jointly with the Department of Justice (in the case of regulations under subsection 15(2)). (The provisions in 16(1) and 16(2) are a change from the *Public Lands Grants Act*, under which a minister such as the Minister of Public Works and Government Services and the Minister of Indian Affairs and Northern Development could seek Governor in Council authority for a specific disposition or could propose regulations regarding dispositions. Under the FRPA, the Treasury Board's recommendation must be sought to gain access to the Governor in Council authorities under subsections 16(1) and (2).); and
- subsection 16(4) of the Act permits the Treasury Board to make financial or other managerial limitations to authorities granted to ministers in relation to real property transactions. These policy limits allow the Treasury Board to tailor its policy directives to ministers in a manner that recognizes the managerial expertise of their departments.

3.1.14 What did the FRPA change in regard to real property in the Yukon and Northwest Territories?

The *Federal Real Property Act* does not provide authority for the granting of federal lands in the Yukon and Northwest Territories that are governed by the *Territorial Lands Act*.

The *Territorial Lands Act* applies to lands in the Yukon and Northwest Territories under the administration of the Minister of Indian Affairs and Northern Development and, in certain circumstances, the Territorial Commissioners. Under the *Territorial Lands Act*, certain mineral and other rights are reserved to the Crown when a grant of territorial lands is made under the Act.

However, other federal ministers administer federal lands in the territories, the lands having been acquired by purchase from private parties or by transfer of administration from Indian Affairs and Northern Development. These federal lands are not governed by the *Territorial Lands Act*. Instead, dispositions of these lands had been governed by the *Public Lands Grants Act* or the *Surplus Crown Assets Act*, which did not require the reservation of the Crown rights set out in the *Territorial Lands Act*. (The dispositions of these lands are now governed by the FRPA.)

Because of this it is possible for two neighbours, each having purchased a parcel of land from the federal Crown, to have acquired significantly different rights in their land. This inequity was eliminated by section 17 of the FRPA. This section requires all grants of federal real property in the Yukon and Northwest Territories made under the FRPA to be subject to the same reservations to the Crown of mineral and other rights as set out in the *Territorial Lands Act*. Thus, all grantees of federal lands in the two territories are treated in the same fashion.

Subsections 17(2) and (3) of the FRPA also clarify which federal minister has the administration of the reserved rights.

3.2 Crown Grants

3.2.1 What kinds of documents can be used to issue Crown grants of federal lands under the FRPA?

There are six classes of documents that can be used to grant federal Crown lands under the *Federal Real Property Act*:

- a grant by letters patent referred to in paragraph 5(1)(a) of the Act;
- an instrument of grant as described in paragraph 5(1)(b);
- a provincial conveyancing instrument under paragraph 5(2);
- a conveyancing instrument used in a foreign jurisdiction under subsection 5(3);
- a lease within Canada under subsection 5(4); and
- a plan used to grant real property under section 7.

Prior to the coming into force of the FRPA, most federal real property grants were made by letters patent. The FRPA did not alter the legal effect or the procedures concerning letters patent.

What the Act did was provide for alternative documents that could be used instead of letters patent. These alternative documents, the instruments of grant, provincial and foreign instruments, and plans may be used to grant federal real property, but do not have the complex processes and the time delay involved in issuing letters patent. This also provides the federal government with the ability to convey real property using the same means as are used in the private sector, thus supporting the public policy objective of the government dealing with the public in customary terms.

3.2.2 What is a notification?

A notification is a document issued pursuant to the *Territorial Lands Act* by the Minister of Indian Affairs and Northern Development or a Territorial Commissioner directing that a certificate of title be issued by the Registrar of Land Titles in respect of lands in the Yukon and Northwest Territories. The person named in the certificate of title is the registered owner of the lands.

A notification has the same force and effect as a grant of territorial land made by letters patent. Under the FRPA, a Crown grant is defined to include a notification.

3.2.3 What are letters patent under the Great Seal?

Letters patent have been defined as "writing of the sovereign, sealed with the Great Seal, whereby a person or company is entitled to do acts or enjoy privileges which could not be done or enjoyed without such authority."

There is a common law rule dating back several centuries that land owned by the Crown can only be conveyed by way of letters patent unless there is statutory authority to do otherwise. There does exist some federal legislation authorizing the disposition of Crown lands by way of instruments other than letters patent. For example, under subsection 96(1) of the *National Housing Act*, C.M.H.C. is authorized to execute deeds or grants of easements, etc., in relation to certain Crown lands. Other examples are notifications under the *Territorial Lands Act* and leases.

However, prior to the FRPA, letters patent were the main legal instrument by which Crown lands or interests therein are granted to individuals or corporations, although there were complex processes and time delays involved in issuing letters patent.

3.2.4 How are letters patent issued?

The *Seals Act* and the Format Document Regulations regulate the procedures for issuing and sealing letters patent (after the requisite authority for selling or disposing is obtained). These procedures are quite complex and normally involve at least three departments. The process usually takes from four to six weeks from the date of the initial request. This period is in addition to the time required to negotiate the transaction, prepare its documentation and obtain the necessary Order in Council or other required authority.

3.2.5 Were letters patent eliminated under the Act? If not, why not eliminate letters patent altogether? Why is an alternative instrument needed for letters patent? Is there a difference in legal effect between "instruments of grant" and grants made by letters patent?

No, the option to issue letters patent remains open. Letters patent are the traditional instruments by which the federal or provincial Crown have granted title to land or any estate or interest in land. The government decided to retain the ability to use letters patent in appropriate cases, such as where a purchaser of public lands specifically requests the use of letters patent.

In addition, letters patents are still required for a more esoteric legal reason. The new category of grants under the FRPA, the instruments of grant, is given under the Act the same legal force and effect as letters patent. Over the years court cases have dealt with the legal force and effect of letters patent. Therefore, we need to keep letters patent at least to have this jurisprudence continue to apply to the instruments of grant.

An alternative instrument to letters patent is needed because:

- Letters patent are not used in conveyancing practice in the private sector. As a matter of public policy the government should deal with the public in terms that the public is accustomed to use.
- Letters patent, by their nature, involve complex processes and time delays. The procedures for issuing letters patent are regulated by the *Seals Act* and the Format Document Regulations.

Under the FRPA, both the "instruments of grant" and letters patent are of equal effect (refer to subsection 5(7)).

3.2.6. Does using provincial instruments result in adopting provincial law?

This subsection may entail adopting the laws in force in a province which governs such instruments and their effects. However, the legal interests of the federal government are protected by requiring the Minister of Justice to approve any instrument used.

3.2.7 What are some examples of provincial conveyancing documents that could be used for Crown grants under the Act?

Examples of such documents include:

- a deed;
- a transfer form;
- a deed of sale in Quebec; and
- a lease drawn in accordance with a provincial Short Form of Leases Act.

3.2.8 Why isn't the approval of the Minister of Justice required for Crown grants using foreign instruments?

In a transaction outside Canada the advice of a lawyer in the jurisdiction in question would be obtained in preparing the conveyancing documents, and therefore it is not necessary for the Minister of Justice to approve the Crown grant. Requiring that the Minister of Justice approve the foreign instruments to be used in a Crown grant for lands outside Canada could create a considerable delay in closing the transaction.

3.2.9 Why must the instruments of grant and the provincial instruments be signed by both the Minister administering the real property and the Minister of Justice?

Regulations under the *Seals Act* require the Minister of Justice to sign all grants of federal land issued under the Great Seal, i.e., letters patent. This ensures that the legal interests of Her Majesty are protected in dispositions of federal real property. The instruments of grant and the provincial instruments are not issued under the Great Seal and it is intended that they would not be governed by the regulations under the *Seals Act*. Therefore, the Minister of Justice's signature is required to make sure that Her Majesty's legal interests would be protected in the same way for letters patent and the new classes of Crown grants.

3.2.10 What are "words of limitation?"

"Words of limitation" is a legal expression for the words used in a deed or otherwise to grant a particular estate or interest in real property. It is the right of a person conveying real property to limit the interest being conveyed in the real property as he or she sees fit.

Words of limitation simply define the interest transferred in the deed. Ironically, the presence of words of limitation in a deed may result in conveying a greater interest in the real property than that which would have been conveyed otherwise.

For example, at common law if a deed conveying real property contained only the name of the person receiving the land and did not contain "words of limitation" defining the interest conveyed, the deed was considered to only transfer a life estate. In other words, the person only received the right to use the lands during his or her lifetime and at his or her death the lands would go back to the former landowner. However, if the deed contained the name of the person and the words of limitation "and his/her heirs," the deed was considered to have transferred the property absolutely and without any conditions.

The common law has been altered by statute in most Canadian provinces. The modern presumption is for all deeds to be absolute transfers unless clearly stated otherwise.

3.2.11 Why would the federal government want the right to grant real property to itself?

The primary reason is to resolve some technical problems with certain land registration systems that preclude the registration of some federal public lands.

Prior to the FRPA, the federal Crown was unable to grant land to itself. This technically barred ungranted federal lands from being included in provincial land registries which require a Crown grant for a first registration. Some provinces that operate under a Torrens system have this requirement, e.g., British Columbia.

Section 10 of the FRPA removed that barrier and allowed registration in those provinces. This section also provides a useful tool in structuring land transactions. For example, the Crown may want to have an easement over federal lands that it wishes to sell. Section 10 will allow the federal Crown to grant the easement to itself prior to the sale of the lands. This transaction would be more complicated if the Crown did not have the right to grant the easement to itself.

3.2.12 Why are there different rules for foreign transactions?

The disposition of federal real property outside of Canada is complicated by certain legal principles and the interaction between them. The local (foreign) law generally governs the acquisition and disposal of land but the local (foreign) laws vary as to the extent to which the Canadian federal Crown is subject to these laws.

There are problems surrounding the use of letters patent in disposing of federal real property outside of Canada. A complicating factor is that the local (foreign) law affects the form and content of the letters patent.

Subsection 5(3) of the FRPA recognizes that there are different practices used in foreign real property transactions. The subsection allows the disposal documents to be tailor-made in light of the circumstances of the particular case, including the local foreign law. It should be noted that a head of mission may be delegated authority for transactions abroad.

3.3 Real Property Conveyances

3.3.1 What are servitudes and easements?

Servitudes relate to real property in the Province of Quebec. They are derived from Roman civil law and closely correspond to easements in common law. A servitude is a charge against a property for the benefit of another property (a real servitude) or a person (a personal servitude).

Both real and personal servitudes are interests in real property. A personal servitude could be a person's right of access over another's property. An example of a real servitude would be a right of view for a building over another property.

An easement is a right of the owner of one parcel of land to use the land of another for a specified purpose. At common law, the easement must be for the benefit of another property (note property, not person). Easements are used in the common law provinces.

3.3.2 What is the difference between a lease and a licence?

At common law, a lease is an agreement whereby a landlord transfers part of his or her interest in real property to another person. Unlike a lease, a licence at common law does not create any right or interest in the land itself and does not imply or confer a right to exclusive possession of the lands.

In civil law, the lease of an immovable is a contract by which the lessor agrees to grant the lessee the enjoyment of the immovable during a certain time period for a consideration (the rent). It usually creates a "personal" right rather than a "real" right (an interest in land), except in the case of an emphyteutic lease or a lease with surface rights.

A licence relating to land is, at common law, a personal privilege or permission with respect to some use of lands. In civil law, an occupation licence [permis d'occupation] is defined as an authorization given to a person to occupy land temporarily. It may be cancelled by the licensor at any time without notice, formality or compensation unless otherwise stipulated in the contract between the parties.

Under the FRPA a lease is included in the definition of an "interest." A licence is defined in the Act as including all the rights of use or occupation of real property that are not caught in the definition of "interest."

3.3.3 What is a surrender of a lease?

A surrender of a lease is an agreement terminating the lease. A surrender of lease could be advantageous to a tenant where the tenant's requirements have changed and result in the leased premises becoming unsuitable. In such a case, the tenant may well wish to pay the landlord a sum of money to release him or her from the balance of the term of the lease. Alternatively, it may be to the landlord's benefit to pay the tenant to vacate the building to enable the landlord to renovate or sell the building or enter into a lease with another tenant.

3.3.4 What is a relinquishment of a licence?

A relinquishment of a licence is the termination of the right to use real property given by the licence. Such a right may be relinquished in several ways, including:

- agreement between the licensor and the licensee; or
- unilateral action by the licensor (in certain licences).

3.3.5 What did the FRPA change in the governmental processes relating to surrenders of leases and relinquishments of licences?

In addition to the Order in Council route under paragraphs 16(1)(f), paragraph 16(2)(d) provides for making regulations authorizing the granting or acceptance of surrenders.

Previous regulations that authorized a minister to enter into a lease as a landlord or tenant did not provide for the giving or accepting of surrenders by the Crown. Under previous law, an Order in Council was required for the federal Crown, as tenant, to surrender a lease or for the federal Crown, as landlord, to accept a surrender of lease. The Order in Council was required because in either case a federal proprietary interest is given up or relinquished (the leasehold interest in the case of the Crown as tenant; the rent in the case of the Crown as landlord). The result is that while ministers were given fairly broad authority to enter into leases, they were precluded from terminating those same leases unless they obtained the authorization of the Governor in Council.

Ministers were also prevented from making certain amendments to leases which in the eyes of the law amount to an implied surrender. For example, additional land could not be added to a lease nor could the term of the lease be extended.

A surrender of a lease or a relinquishment of a licence had been treated like forgiving a debt, which under the FAA requires an Order in Council. However, this disregards the differences between the two.

There are many instances in which it is in Her Majesty's interest to surrender a lease or relinquish a licence or to accept a surrender of a lease or a relinquishment of a licence. In summary, the FRPA did away with the need in all cases for Order in Council authority by providing for both Order in Council authority and authority under regulations.

3.3.6 What is fee simple?

At common law, an estate in fee simple in a parcel of land is one transferred absolutely to a person and his or her heirs, forever, without any conditions. This is the highest estate in land that can be held by a person in a common law province.

The civil law equivalent of a fee simple estate is the concept of "ownership," which is the right of enjoying and disposing of an immovable in the most absolute manner. The only restriction is that no use be made of the immovable that is prohibited by law or regulation.

An estate in fee simple is freely transferable by deed, will or otherwise.

3.4 Administration

3.4.1 What is "administration" of federal real property?

The word "administration" refers to the administrative responsibility of a minister over a particular piece of federal real property.

"Administration" is not an ownership right, and does not in itself give the minister the right to sell, lease, or otherwise dispose of the property or the right to the proceeds from a disposition of the property. The administering minister has the right to use the property for the purposes of the programs of the minister's department.

The right of a minister to sell, lease or otherwise dispose of real property is governed by subsections 16(1) and (2) of the FRPA or by any specific provision contained in another Act.

3.4.2 Why was the change made to "administration?"

Prior to the FRPA, federal statutes used various words or phrases, such as "management, charge and direction" to describe what the FRPA calls "administration." The change in the FRPA to the use of the word "administration" was primarily motivated by two concerns:

- a desire for a uniformity of language throughout the law; and
- the elimination of the possibility of having different words used for the same concept interpreted differently.

Subsection 18(2) of the FRPA was drafted to provide a general equivalence between the various former wordings and "administration." In addition, some of the consequential amendments in the FRPA specifically changed previous phrases. It should be noted that a conscious effort was made to specifically change only those provisions in other Acts that referred only to real property. Some provisions, such as were contained then in the *Public Works Act* and other statutes, were not amended because they covered both real property and personal property, such as boats.

3.4.3 What is the difference between "administration" and "administration and control?"

While the word "administration" refers to the administrative responsibility of a minister over a particular piece of federal real property, the words "administration and control" refer solely to the administrative responsibility for a particular piece of Crown land by either the federal government or a provincial government.

Transfers of administration are internal transfers within the federal government of the administrative responsibility for real property. Such transfers may be between two ministers or a minister and an agent corporation.

"Administration" is not an ownership right, and does not in itself give the minister the right to sell, lease, or otherwise dispose of the property or the right to the proceeds from a disposition of the property. There is no change in title to the lands when there is a transfer of administration.

As indicated, the words "administration and control" are used to denote the relationship between Crown lands and the Crown, either federal or provincial, which controls the lands. Strictly speaking, there is only one Crown, and therefore there should be no difference in the ownership of Crown lands between lands held by the federal Crown and lands held by a provincial Crown.

However, there are differences in management, uses, and purposes between federal and provincial Crown lands. To differentiate between the two, whichever Crown is holding and controlling the lands is said to have the "administration and control" of the lands. However, unlike "administration," "administration and control" is in essence a right of ownership. Legislative jurisdiction follows "administration and control," and therefore the government, federal or provincial, administering and controlling a piece of real property would have the right to make laws about the property. This would normally carry with it the right to dispose of the lands and to keep the proceeds.

3.4.4 What are the main responsibilities of a minister in relation to real property the minister administers?

A minister administering federal real property has two main responsibilities to the government and to the taxpayers with respect to those lands:

- a responsibility to use the property to deliver government programs during the temporary possession of the property; and
- a responsibility to manage and maintain the property in a proper fashion.

3.4.5 Did the coming into force of the FRPA affect administration held by a minister?

No. Subsection 18(3) of the FRPA confirms that administration continues to be held by the minister until

- the administration is transferred under the Act, or
- the Governor in Council authorizes or directs that the administration be transferred.

3.4.6 Why are transfers of administration made?

Transfers of administration are made to ensure the maximum use of the real property the government holds in support of its programs. If a minister no longer requires certain federal real property for the programs of the minister's department, administration of those lands can be transferred to a minister who needs the property to support the programs of another department.

3.4.7 In the FRPA and the FRPRegs why was the wording "administrative responsibility" applied to licences rather than "administration?"

The different wording was used, at the request of Justice, to keep clear the legal distinction between a lease and a licence, the latter of which is not an interest in land.

3.5 Administration and Control

3.5.1 How did the FRPA affect transfers of administration and control between the federal and provincial Crowns?

The Act provides the means by which such transfers can be accomplished.

Subsection 11(2) provides that a grant, transfer, or vesting order from a province, once accepted, results in a transfer of administration and control from the provincial to the federal Crown. This also applies to transfers from other Commonwealth countries for which Her Majesty holds the title to real property.

Paragraph 16(1)(e) provides that the Governor in Council may transfer the administration and control of any interest in lands to a province either forever or for a lesser term and subject to any conditions, restrictions or limitations.

Paragraph 16(1)(f) provides statutory authority for accepting transfers of administration and control. Prior to the FRPA, the authority to accept such transfers was under the Royal prerogative. Paragraphs 16(2)(e) and (f) respectively provide for regulations regarding the transfers of administration and control (by means other than Orders in Council) and acceptances of transfers of administration and control, see section 5 of the FRPRegs.

3.5.2 Why must transfers of administration and control be satisfactory to and be countersigned by the Minister of Justice?

Transfers of administration and control, unlike other acquisitions, always involve constitutional issues as legislative jurisdiction follows a transfer of administration and control. This factor, and the complicated nature of most of these transfers, warrant the involvement of the Department of Justice.

3.5.3 How and under what authority did the federal government accept transfers of administration and control prior to the FRPA?

Transfers of administration and control were accepted by Orders in Council issued under the Royal prerogative.

3.5.4 What is a vesting order?

A vesting order is a Court order or order from another authority which vests, i.e., grants, title of real property to an individual or corporation.

3.5.5 What would be a transfer of a "lesser interest?"

The words "lesser interest" when used in the FRPA and the FRPRegs relate to an interest less than the entire interest of the federal or provincial Crown in the property. An example of a transfer of a lesser interest in Crown property would be the granting of an easement over the lands.

3.6 Department of Justice

3.6.1 What kind of transactions are referred to the Minister of Justice?

The Federal Real Property Regulations refer disposal transactions other than certain excepted transactions to the Minister of Justice for settlement and approval of the form and legal content of the Crown grants. This clarifies that Justice's role of settling and approving Crown grants did not change with the enactment of the FRPA and the FRPRegs.

The *Department of Justice Act*, paragraph 5(c), states that the Minister of Justice, as the Attorney General of Canada, shall settle and approve all instruments issued under the Great Seal, such as letters patent. As the new types of disposal instruments allowed under the FRPA, i.e., the instrument of grant, provincial instruments and plans, are not issued under the Great Seal, the Justice Act provision does not apply to them. Therefore, settlement and approval of the new Crown grants was necessary to make sure that Her Majesty's legal interests would be protected in the same way for letters patent and the new classes of Crown grants.

3.6.2 Why is the document depository necessary?

The Registrar General of Canada, under Industry Canada, is required to register all Crown grants of real property under the Great Seal, i.e., letters patent. As the FRPA allowed the government to issue Crown grants that are not under the Great Seal, such as instruments of grant, provincial instruments, foreign instruments and plans, a depository was needed to maintain records of these other Crown grants. Such a depository allows lawyers to ascertain the existence, date and nature of these Crown grants and the legal authority for the transaction.

3.7 Crown and other Government Corporations

3.7.1 What is the difference between Crown corporations, agent corporations, and departmental corporations?

A Crown corporation is a corporation which is wholly owned by the federal Crown, or which is a wholly owned subsidiary of such a corporation ("wholly owned" being as defined in subsection 83(2) of the FAA).

An agent corporation, under the FRPA, means a Crown corporation that is expressly declared by or pursuant to an Act of Parliament to be an agent of the Crown. Some examples of agent corporations are:

- Canada Post Corporation;
- Canada Mortgage and Housing Corporation;
- Canada Ports Corporation;
- National Capital Commission; and
- Farm Credit Corporation.

A departmental corporation means a corporation named in Schedule II of the FAA. That Schedule is limited to corporations that are established by federal statutes and perform administrative, research, supervisory, advisory or regulatory functions of a governmental nature. For the purposes of the FRPA, a departmental corporation is treated the same as a government department. Some examples of departmental corporations are:

- Atomic Energy Control Board;
- Canada Employment and Immigration Commission;
- Economic Council of Canada; and
- National Research Council of Canada.

A Crown corporation may be neither an agent nor a departmental corporation. Some examples are Canadian National Railways and the National Arts Centre Corporation.

3.7.2 Did the coming into force of the FRPA affect administration held by a Crown corporation?

No. The *Federal Real Property Act* only enables

- the granting of federal real property under the administration of a corporation to that corporation or a person designated in writing by that corporation;

- the transfer of administration of federal real property from a minister to an agent corporation; and
- the transfer of administration of federal real property from an agent corporation to a minister.

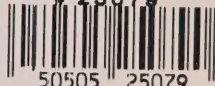
3.7.3 Did this mean that a Crown corporation that managed, charged and directed real property would suddenly lose its power to dispose of the property and retain the proceeds from the disposal because it would only have "administration" of the property?

No. A Crown corporation retains the same powers it had under the Act establishing the corporation or the *Financial Administration Act*. Subsection (6) of the FRPA only treats a corporation for certain specific purposes as if it had administration of federal real property. The *Federal Real Property Act* purposely does not affect in any way the rights Crown corporations have in relation to the federal real property they administer.



ACCO® USA
2550170 ILLINOIS 60090

MADE
IN
U.S.A



50505 25079

EXCLUSIVE RED/ROUGE EX/ROUGE E.I.E

